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Professor Kingsfield Goes to Delhi: American Academics, the Ford Foundation, and the Development of Legal Education in India

by JAYANTH K. KRISHNAN*

On January 26, 1950 the Constitution of India came into effect.¹ Nearly two and one-half years after winning independence from Britain, India enacted one of the most detailed, rights-based constitutions ever seen in the history of the world.² The passage of such a democratic constitution was inspirational—not just for a country that endured centuries of both informal and formal colonial rule, but also for those in the West. Many American observers in particular looked on with awe as this economically poor, yet fiercely independent nation sought to embrace political and legal principles that had long been valued within the United States. The Ford Foundation—one of the world's leading philanthropic institutions based in the U.S.—soon also became infatuated with the promise and overall “idea of India.”³ For Ford, India exhibited great potential: its political and military leaders opted for democracy rather than dictatorship; its first prime minister, Jawaharlal Nehru, was a dynamic, Western-educated figure committed to economic development and modernization; and it retained English as a main national language, thereby giving Americans, who so desired, a better opportunity to work more

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1. See Const. of India, 1950.

2. Today, the constitution has twenty-two parts, twenty-plus chapters, nearly four hundred separate articles, an appendix (known as the section of schedules), and a set of directive, non-justiciable public policy principles. Embedded as well within the constitution, within part three in particular, were the “fundamental rights” guaranteed to every Indian. The broad categories that these fundamental rights covered included: the right to equality, the right to freedom, the right against exploitation, the right to practice one's religion, cultural and economic rights, the right to private property, and the right to constitutional remedies. For a classic study on the passage of India's constitution, see GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* (1966). Also see P.M. BAKSHI, *THE CONSTITUTION OF INDIA WITH SELECTIVE COMMENTS* (2000).

3. This term comes from SUNIL KHILNANI, *THE IDEA OF INDIA* (1998).

easily within the country.⁴ For these and other reasons, the Ford Foundation began to take a serious interest in India.

One area that Ford especially focused on involved the development of legal education. Policymakers at Ford Headquarters in New York as well as at Ford's New Delhi office believed that for Indian democracy to succeed, the country needed to have well-established, rule-based institutions administered by those educated in the legal principles of equity, due process, and individual rights.⁵ These officials consulted with a number of Indian legal elites, several of whom had studied in the United States, and together these Americans and Indians concluded that law schools in India would be the ideal place to promote such legal principles. After all, having Indians educated in Western legal doctrine was critical for maintaining Weberian, democratic institutions; and the hope was that this in turn would lead to greater public respect for the rule of law.

Beginning in the 1950s, Ford thus began spending millions of dollars and decades of energy working with Indians to create strong schools of law. One of the first steps Ford took in its initiative was to hire a number of respected American law professors as consultants. These academics were charged with traveling to India, assessing the legal educational environment, and providing recommendations to both Ford and the government of India for how to improve the country's legal education system. Given that many of India's elite had routinely praised the American law school model, Ford worked under the reasonable assumption that U.S. academics would be in the best position to advise their Indian counterparts.

This assumption proved at best to be questionable. To date, no work has presented the views of the academic consultants hired by Ford. For decades these reports were confidential and the consultants were equally reluctant to talk about their opinions. But perhaps because enough time has passed and Ford's involvement in this area has waned, I was granted access to all of Ford's documents on legal education in India. I also was able to interview key American scholars who served as advisors to Ford. This study traces the role American academics played in shaping Indian legal education. As it shows, the belief held by both Ford and its Indian partners that the American law school model could successfully be exported to India soon came to be rejected by many of these U.S. professor-consultants. A consensus developed among these American academics that India's distinctive history, traditions, and legal profession—not to mention its economic struggles and political climate—would make it difficult for the American law school model to thrive in this environment. And to their surprise, these consultants found that Indian legal scholars, who were not affiliated with Ford, had their own innovative ideas on how to improve the country's legal education system.

4. Author interview with an India-consultant to the Ford Foundation, Professor Marc Galanter, January 20, 2004. Author interview with Dr. Carolyn Elliott, former Program Officer, Ford Foundation, Delhi Office, April 1, 2004.

5. Many who worked for Ford maintained this belief. The documentation of such attitudes will be highlighted in the ensuing section.

EARLY EVALUATIONS ON INDIAN LEGAL EDUCATION: 1955-1960

In the years following World War II, many countries in the developing world began gaining their independence from their colonial rulers. In 1947 India and Pakistan gained independence.⁶ One-year later Israeli independence occurred.⁷ Later in the 1950s and 1960s, several countries in Africa, Latin America, and other parts of Asia too became sovereign nations. Several observers in the West saw these independent countries as not only potentially new markets but also as hopeful environments where democracy and the rule of law could thrive.

One institution that took a keen interest in the fast-moving events occurring around the world was the Ford Foundation. The Ford Foundation was "founded in 1936 . . . operat[ing] as a local philanthropy in the state of Michigan until 1950, when it expanded to become a national and international foundation."⁸ (Thereafter the headquarters moved to New York City.⁹) The main mission of Ford has been to provide grants and loans to individuals, non-governmental organizations, businesses, and governments for political, legal, social, cultural, and economic projects that "promote peace, human welfare and the sustainability of the environment on which life depends."¹⁰

Over the years various interest groups and rights-based watchdogs have expressed skepticism at Ford's work. For some, the Foundation has always been tainted because Henry Ford—the founder, wealthy American automobile capitalist, and well-documented anti-Semite—established this organization.¹¹ Others have suspected the Ford Foundation of practicing a new type of colonialism—guaranteeing financial resources to needy countries in return for promises to carry out the American political, legal, and economic agenda.¹² In response, the Ford Foundation notes that it is today an independent institution with no ties to the Ford Motor Company. It also proudly

6. For a selected set of readings, see STANLEY WOLPERT, *A NEW HISTORY OF INDIA* (2003); KHILNANI, *supra* note 3; PAUL BRASS, *THE POLITICS OF INDIA SINCE INDEPENDENCE* (1994).

7. For a selected set of readings, see MARTIN GILBERT, *ISRAEL* (1998); HOWARD SACHAR, *A HISTORY OF ISRAEL* (1996); ARTHUR HERTZBERG, *THE ZIONIST IDEA* (1996).

8. See Ford Foundation Mission Statement: <<http://www.fordfound.org/about/mission2.cfm>>.

9. See Ford Foundation Website: <<http://www.fordfound.org>>.

10. See Ford Foundation Mission Statement: <<http://www.fordfound.org/about/mission2cfm>>.

11. For a selected sample of works discussing Ford's anti-semitism, see NEIL BALDWIN, *HENRY FORD AND THE JEWS: THE MASS PRODUCTION OF HATE* (2001); DOUGLAS BRINKLEY, *WHEELS FOR THE WORLD: HENRY FORD, HIS COMPANY, AND A CENTURY OF PROGRESS, 1903-2003* (2003); MAX WALLACE, *THE AMERICAN AXIS: HENRY FORD, CHARLES LINDBERGH, AND THE RISE OF THE THIRD REICH* (2003).

12. See e.g., James Petras, *The Ford Foundation and the CIA: A Documented Case of Philanthropic Collaboration with the Secret Police*, *REBELLION*, Dec. 15, 2001, <<http://www.ratical.org/ratville/CAH/FordFandCIAhtml>>. Moreover, those who study in the developing world know this sentiment is often expressed by different NGOs, business leaders, and politicians.

boasts that over the years it has donated nearly 12 billion dollars in grants and loans for projects that it believes further its humanitarian mission.¹³

In terms of promoting legal education, significant financial donations from Ford began as early as 1954. In that year the Foundation earmarked 12 million dollars to promote what it called "programs in international studies."¹⁴ Nearly 7.5 million dollars of this money went to certain American law schools to encourage the development of strong international law curricula for students; to train foreign lawyers who came to the U.S. to study; and to promote an environment where American academics could research and specialize in international and comparative law.¹⁵ Initially, five law schools were chosen as the testing sites for Ford's program: Harvard, Columbia, Michigan, Stanford, and Berkeley.¹⁶ A year later, the law schools at Yale and Chicago were also selected to participate.¹⁷ Eventually, another 1.5 million dollars was donated to a "dozen or so [other] law schools"¹⁸ to start international legal studies programs of their own.¹⁹

But Ford did not only target U.S. law schools. Three million dollars was allocated and equally divided to fund, for example, interchanges between American and foreign bar organizations. Research grants for foreign scholars interested in studying international law in the U.S. were also set aside. And money was allocated to develop "cooperative programs" between U.S. law schools and law schools in Asia and Europe.²⁰ These cooperative programs ranged from promoting student exchanges to having American academics advise foreign legal scholars on how to improve legal education in their own countries.²¹

One country that especially caught the attention of Ford policymakers was India. As a signal that it wanted to help support this exciting new democracy, Ford established an office in New Delhi in 1952.²² Early

13. See Ford Foundation Mission Statement: <<http://www.fordfound.org/about/mission2.cfm>>.

14. Don Price, Special Report to the Officers: International Legal Studies, Oct. 26, 1955 (report on file with author).

15. *Id.*

16. *Id.* Harvard was allocated \$2,050,000, Columbia \$1,500,000, Michigan \$500,000, Stanford \$600,000 and Cal \$300,000.

17. *Id.* In 1955, the Ford Foundation Board of Trustees approved a grant of \$700,000 to Yale and \$1,175,000 to Chicago. The American Law Institute also received \$300,000. And during this first phase of funding, Duke University Law School received a \$5,000 grant.

18. *Id.*

19. The other schools included: Cornell, Penn, NYU, SMU, Tulane, LSU, Texas, Duke, George Washington, Georgetown, Virginia, Wisconsin, Northwestern, Nebraska, Indiana, Illinois, Miami, Vanderbilt, and North Carolina. Note, Ford praised these schools for adroitly recognizing that newly emerging nation-states viewed "U.S. concepts and experience of constitutional government . . . as relevant to their own situations." *Id.*

20. *Id.*

21. *Id.* The countries of focus included Turkey, Egypt, Pakistan, West Germany, and India.

22. *Id.* The Ford office in Delhi was run in a pyramid manner. The head of the office was designated as the Representative. This Representative had one or two Deputy Representatives (DR), and below the DRs were Program Officers, who then had staff

memoranda among Ford officials indicate that they were particularly impressed with how certain Indians, such as Dean Sivasubramanian of the Delhi Law Faculty,²³ were keen about coming to the U.S. to learn more about the American law school model. As one Ford official noted, "this eminent Indian legal scholar is interested in studying American legal education, promoting closer relations between American and Indian law schools, and encouraging comparative studies in the constitutional law of the two countries."²⁴ Ford clearly appreciated this enthusiasm; in 1955, the Ford Delhi office convinced the New York headquarters to support Dean Sivasubramanian for a one-year visit to the U.S., so that he could travel the country and learn about American legal education.²⁵

Then in 1956, Ford tapped Stanford Law School Dean and comparative law scholar, Carl B. Spaeth, to travel to India to assess the country's legal education landscape. Spaeth was accompanied by Herbert Merillat, a lawyer, independent writer, and historian who later went on to publish a book on the Indian Constitution.²⁶ Spaeth and Merillat spent three weeks in 1956 visiting New Delhi, Calcutta, Madras, and Bombay; they were asked to report on what role Ford might play in helping to develop and strengthen Indian law schools.²⁷ From their writings, Spaeth and Merillat discuss how rather than serving as advisors, their strategy from the outset

personnel below them. Initially the top leaders in the Delhi office were Americans, but over time this has changed and the office has become much more "Indian" in composition. (Today, the Representative himself is an Indian.)

23. *Id.* As I shall explain later, up until the mid 1980s, the term "law school" was not one oft-used by Indians to describe legal educational institutions. A legal education institution in India was generally known as a "law faculty." A student studying law at Delhi University, thus, would say she is studying at the Delhi Law Faculty. Law faculties, like at Delhi University, could award, in addition to the LL.B, LL.M. as well as Ph.D degrees. But as I will explain, in some parts of the country (like Bombay), legal education institutions would be referred to as "law colleges." These law colleges would award the LL.B. degree and basically be autonomous institutions that fell under the auspices of a broad university structure. In these systems, the university might also have something called "law departments." These law departments would be places where students could pursue higher law degrees, such as an LL.M. or Ph.D. Bombay University, which has several law colleges under it, also had a law department as well. Throughout the course of this article, when I am generally talking about—or describing the views Americans had of—Indian legal educational institutions, I shall use the term "law school." However, when referring to specific institutions in India, I shall use the appropriate names that those institutions referred to themselves as.

24. *Id.*

25. *Id.* According to Ford documents, Ford spent \$11,600 to support Sivasubramanian for that year.

26. See HERBERT CHRISTIAN MERILLAT, *LAND AND THE CONSTITUTION IN INDIA* (1970).

27. Spaeth and Merillat wrote-up three reports for Ford based on their mission to India. The first two reports were drafts: See Carl B. Spaeth and H.C.L. Merillat, *Legal Studies in India*, Draft of a Summary Report, Dec. 5, 1956 (unpublished document on file with author); Carl B. Spaeth and H.C.L. Merillat, *Legal Studies in India: A Summary Report of Spaeth-Merillat Visit*, Jan. 7, 1957 (unpublished document on file with author.) I will be referring to both of these documents, but mainly to the final report: Carl B. Spaeth and H.C.L. Merillat, *Indian Legal Studies: Report on Spaeth-Merillat Visit*, Feb. 1957 (unpublished document on file with author) [hereinafter Spaeth-Merillat Visit, Final Report].

was to conceptualize the "problems [of legal education] as seen by the Indians and what Indians have done or are thinking of doing to meet these problems."²⁸ Spaeth and Merillat were interested in being thought of as students eager to learn from those working in the legal field as opposed to presenting themselves as experts who possessed all the right answers.²⁹

As Spaeth and Merillat admit, they took this approach, in part, for instrumental reasons. "We were well aware that a show of [Ford] Foundation interest, evidenced by our visit, might distort real Indian interests and encourage plans not built on a solid Indian base."³⁰ But aside from wanting to avoid the perception of being characterized as the newest colonial vanguard, a close inspection of the Spaeth-Merillat report reveals that the authors had a genuine desire to learn from their hosts. For example, they begin their evaluation of the Indian legal educational environment not by offering their recommendations and observations but rather by quoting from a long memorandum prepared by R.U. Singh, Dean at that time of the Lucknow Law Faculty (located in the northern state of Uttar Pradesh.) Singh cited a number of deficiencies within Indian legal educational institutions, including irregular times classes were held, low attendance rates by students who faced little if any disciplinary action for missing classes, poor testing methods by instructors, inadequate facilities, outdated curricula, and second-rate instructors who were paid below-average salaries.³¹

Spaeth and Merillat soon learned that other Indian academics and lawyers also concurred with Singh's evaluation. But a disturbing sentiment Spaeth and Merillat found in their interviews with these legal educators was the "widespread skepticism" that anything could be done to change the status quo.³² Required, according to the interviewees, was a financial commitment from the central government to improve the nation's law schools. Yet Indian lawyers and Indian judges at that time were not favorably viewed by politicians. Politicians accused these two groups of impeding the state's ability to grow and carry out its economic and social policies. (Lawyers had won a series of court-cases challenging the government's attempts to enhance its power.³³) As such, Indian legal educators saw little chance that the ruling Congress party would place the reformation of the country's law schools as a high priority.³⁴

In 1957, Spaeth and Merillat issued their final report. Rather than

28. See Spaeth-Merillat, Final Report, p. 2.

29. *Id.*

30. *Id.*

31. *Id.* at 5-7.

32. *Id.* at 10.

33. Professor S.P. Sathe has discussed this point at great length recently in a book on the Indian judiciary. He argues that in a series of property law and economic policy cases, the Indian courts attempted to place a check on the central government's growth, by striking down Parliamentary-passed laws granting the government increased power to govern in these areas. See S.P. SATHE, JUDICIAL ACTIVISM IN INDIA (2002). Also see MERILLAT, *supra* note 26.

34. See Spaeth-Merillat, Final Report, *supra* note 27.

making broad, sweeping recommendations, they argued for Ford to take more measured, watchful steps. For instance, they called upon all Indian law schools to confront the issues raised by Dean Singh.³⁵ However, instead of having Ford officials or other Westerners oversee whether law schools were raising their standards, Spaeth and Merillat argued that an Indian body—such as the All India Bar Association or independent commission of Indian academics—be in charge.³⁶ Spaeth and Merillat also proposed that before Ford offered its suggestions on how to improve the Indian law school curriculum, it first should receive input directly from Indian academics.³⁷ If it were to spend its money, Ford for now ought to just support the establishment of research groups comprised of both Indians and Americans who would work together on developing stronger curriculums, particularly in the areas of statutory drafting and constitutional law—the latter Indian scholars especially believed to be “the most urgent field for study in terms of Indian needs and also the most promising field for comparative and cooperative work with scholars from the United States and other countries.”³⁸

In other words, Spaeth and Merillat thought it was unwise for Ford to plunge into an environment where still so little was known about how Indian legal education functioned. For example, Ford apparently earlier indicated that it was interested in setting up an Indian national law institute, modeled after the American Law Institute.³⁹ Spaeth and Merillat though urged caution before moving ahead with such a large project. What work would be done at this institute and how would it improve legal education in India? In what city would such an institute be located and would this cause tension with other cities that lost out? How would Indian politicians react to the creation of such a body? Would the institute be independent or affiliated with a university? Who would its members be and who would staff the institute? Perhaps because of their reservations a scaled-back, independent Indian Law Institute was established in New Delhi in December of 1956 (with financial support from Ford). And although Spaeth and Merillat ultimately conceded in their report that this body might be successful, they continued to believe that it was important to ascertain the answers to these questions before pressing ahead any further.⁴⁰

Spaeth and Merillat also expressed worry about Ford’s apparent large-

35. *Id.* at 10-12.

36. *Id.* at 10.

37. *Id.* at 12.

38. *Id.* at 16, 24-25. In terms of legislative drafting, Spaeth and Merillat emphasized that this was an area that also needed immediate attention. Especially with the state growing rapidly and increasing legislation being passed, they were told by their Indian hosts that this was a key area that the lawyers of the day had little to no expertise in.

39. *Id.* at 17, [report stating that Ford had given “some encouragement” to Dean Sivasubramanian that it was willing to help establish a research center (which earlier in the report is the term used for the national law institute) that would be possibly connected to an Indian university].

40. *See id.* at 14-20. The spring 1958 issue of the *American Journal of Comparative Law*

scale plans to sponsor Indian lawyers to study in the U.S. For these American consultants, such "wholesale training of Indian lawyers abroad"⁴¹ only made sense if what they learned in the U.S. could be practically used in India. Not even a decade had passed since India gained independence; Indians were still trying to grapple with how their legal system operated. To inculcate Indian lawyers with American legal values without first understanding Indian needs, ran the risk of creating the perception that Ford was simply promoting American propaganda. Spaeth and Merillat thus recommended that Ford concentrate on sponsoring two groups of Indians to the U.S.: academics (including judges) who could return to India after studying the pluses (and minuses) of American legal education; and foreign-service officers who could learn the theoretical and practical aspects of international law and diplomacy from American law professors.⁴²

To illustrate to Ford the benefits of such a tightly focused exchange program, upon his return to Stanford, Spaeth organized a five-week conference in Palo Alto during the summer of 1957, bringing together five Indians, representing both of the above-mentioned groups, and four American law professors.⁴³ In addition to the new relationships that developed and the rich experience both the Americans and Indians gained from this intimate working session, the Stanford conference produced an important series of articles focusing on "Comparative Constitutional Law, Administrative Law, and other fields relating to law and social change."⁴⁴ The conference participants had two goals for these papers. First, they hoped that the works might spur researchers in India to delve further into one or more of these areas. Second, they also wanted Indian legal educators to see the relevance of considering legal problems in both a historic and comparative perspective, as well as in terms of how law and public policy intersected.⁴⁵

published a summary report of a one-year anniversary conference held by the ILI in December 1957. As Professor Lawrence Ebb, another Stanford University academic interested in India, wrote: "the Final Report . . . proposes that the Institute undertake research projects in four areas of administrative law and in one major problem of constitutional law." The AJCL issue also contains an interesting note by Professor A.T. Markose of the Trivandrum Law College (India) which contextualizes for the non-Indian specialist the political and legal climate that existed at the time the ILI came into being. See Lawrence F. Ebb, *Conference of the Indian Law Institute*, 7 AM. J. COMP. L. 219 (1958).

41. See Spaeth-Merillat, Final Report, *supra* note 27 at 23.

42. *Id.* at 23-24.

43. Spaeth convinced Ford to fund this program and a final report on this conference was published by Stanford. See LAWRENCE F. EBB, PUBLIC LAW PROBLEMS IN INDIA (1957). The Indian participants included: Chandra Bhan Agarwal, former justice on the Allahabad High Court; G.N. Joshi, Supreme Court lawyer and former Professor at Bombay Law College; Prasanta Bheari Mukharji, a justice on the Calcutta High Court; S.M. Sikri, a governmental lawyer from the state of Punjab; and Professor Pradyuma Tripathi of Delhi Law School. The American law professors included: Clark Byse (University of Pennsylvania); Lawrence F. Ebb (Stanford Law School); Howard Mann (Indiana); and Nathaniel Nathanson (Northwestern), and of course Carl Spaeth.

44. *Id.* at vi.

45. *Id.* at v-ix. Also reading through the fifteen different entries, this theme comes up repeatedly.

Rarely did Indian law teachers push their students to conceptualize legal problems in this manner; rather the main way students learned was through rote memorization of black-letter rules. For those meeting at the Stanford conference, a key objective thus was to have Indian legal educators reconsider their traditional methods of education. In sum, the cooperative results that came out of the 1957 Palo Alto meeting wonderfully represented what the Spaeth-Merillatt report sought to convey: that Ford's enthusiasm for wanting to assist in the development of Indian legal education needed to be balanced against how its efforts appeared to those it was seeking to help. Simply arriving on the scene with large sums of money and liberally doling out advice did little to address the structural problems identified, for example, by Dean R.U. Singh. The best way to strengthen Indian legal education would be through the deliberate and patient study of Indian society and by Americans and Indians working together and learning from one another—rather than by having the former serve as “advisors” to the latter.

AN INDIAN GOVERNMENT ASSESSMENT OF LEGAL EDUCATION

As Spaeth and Merrillatt discovered during their 1956 mission and 1957 conference, Indian legal elites were not reluctant to express their ideas for how best to reform India's law schools. The year that Spaeth and Merrillatt visited India, the central government's Law Commission—a state board within the Ministry of Justice charged with proposing law reform related legislation—began a study to revamp Indian legal education.⁴⁶ The Law Commission was not the first state-body to look at this issue. As early as 1917, the British empowered Calcutta University to study how to improve Indian law schools.⁴⁷ One year after independence, the University Education Commission of 1948-1949 examined this subject; and within the next five years three other separate commissions focused on strengthening how law students were educated.⁴⁸ All of these commissions noted that Indian legal education was in disarray; however, the 1956 Law Commission went the furthest in its criticism of how Indian law schools functioned.

46. See MOTILAL CHIMANLAL SETALVAD AND LAW COMMISSION OF INDIA, REFORM OF JUDICIAL ADMINISTRATION (1958) [hereinafter LAW COMMISSION]. Within this report there were many subjects addressed by the Law Commission, legal education just being one of them. The Law Commission of India dates back to the British Raj. The first Commission was established in 1834 and charged with codifying the penal law. After independence, the Commission has been in charge of proposing legislation that would comply with the Constitution's non-justiceable, Directive Principles that mandate the state to bring about legal, political, and solo-economic reform for all Indians. For a detailed discussion on the Commission, see <<http://www.lawcommissionofindia.nic.in/>>.

47. See LAW COMMISSION, *supra* note 46 at 520.

48. *Id.* (noting that the other committees were: the Bombay Legal Education Committee of 1949; the All India Bar Committee of 1953; and the Rajasthan Legal Education Committee of 1955.)

The Law Commission issued a damning final report in 1958. It declared that almost every aspect to law schools in India was "extremely defective" and was "not calculated to produce either jurists or competent legal practitioners."⁴⁹ The Commission, for example, disapproved of the lack of uniformity in admissions. Some institutions, such as Delhi University and Banaras Hindu University, required applicants to possess a bachelors degree before entering, while others (such as Bombay University) allowed graduating high school students to sit for the admissions exam.⁵⁰ Indeed the latter was the practice in England and had been in place in parts of India for some time.⁵¹ But drawing on the philosophy of Roscoe Pound, the Commission believed that law was a difficult, complex science and that the effective study of this subject could only be done by those with intellectual maturity.⁵² The Commission pointed to a previous Indian study that found "the best colleges of law [in the United States] including Harvard, Columbia, Michigan, Chicago, California and others require completion of a four-year degree course in Arts and/or Science before admission to the law courses."⁵³ Likewise the Commission believed that only students with post-baccalaureate degrees and who passed strict entrance exams should be eligible for admission.⁵⁴

The Commission went on to call for other changes. While the duration of legal education—which at this time was two years—was deemed appropriate, the curriculum was not. The Commission argued that students should be subjected to rigorous scientific, theoretical, and doctrinal training in law.⁵⁵ (Interestingly, aside from jurisprudence, the Commission did not spell out what other specific courses should be offered to meet this objective.) It emphatically recommended that

49. *Id.* at 548.

50. *Id.* at 526. In India, the system of high school education generally works as follows: Students matriculate after what is called the 10th standard. Then they do two years of "pre-university" schooling. After completing this "10 plus two" requirement, they then are free to apply to colleges/universities. At the time of the Commission's report, students could apply directly to some law programs, like at Bombay University, following the completion of their high school education.

51. Since 1938, law could be taken as an undergraduate major. Interestingly, up till that point at some Indian law schools (like Bombay University), "admission to the degree course in law was . . . open only to graduates in arts, science or other subjects." See LAW COMMISSION, *supra* note 46 at 526. But after the Report of Legal Education Reforms Committee of 1935, which found that allowing post-high school students to take law as an undergraduate course would be most efficient and economical, most law schools abandoned the prerequisite of an undergraduate degree before studying law.

52. See *id.* at 521 [noting that "the absence of juristic thought and publications in our country is no doubt due, in part, to our defective system of legal education which fails to recognize the study of law as a branch of learning and as a science."]

53. The study cited by the Commission was issued by the 1948-149 University Education Commission. See LAW COMMISSION, *supra* note 46 at 529.

54. *Id.* at 530-31; 539.

55. *Id.* at 531-33. The Commission argued that the traditional practice of teaching Roman law should be abandoned and that a jurisprudence course was a must for students to take during their second year.

procedural and more practical-based courses not be part of the two-year curriculum.⁵⁶ Practical training in law schools, including moot court courses and competitions, had only furthered the perception that legal education was vocational rather than academic in nature.⁵⁷

The Commission even rejected the idea that practitioners be allowed to serve as adjunct professors. Law faculties needed to be staffed with full-time people who saw teaching as a profession unto itself. Traditionally, Indian law faculties were filled with practicing lawyers who would rush to the classroom after a busy workday and show up unprepared to teach. This prevalence of adjuncts contributed to the dearth of academic scholarship from law faculties, much to the dismay of the Commission. Part-time teachers were perpetuating an already “grievously backward”⁵⁸ legal education system, and their “haphazard and cursory methods of teaching”⁵⁹ demeaned the educational process as well as dis-served students. The Commission pointed to the United States where professional teachers appreciated and recognized the value and time-commitment involved in perfecting pedagogy; American law professors had successfully developed a combinational technique of teaching—using lectures, case-law, and the Socratic method, and the Commission recommended Indian law school teachers follow this approach.⁶⁰ Hence, adjuncts had to be replaced immediately if Indian legal education was to move forward.

Although the Commission sought to make the legal educational environment more scholarly, it recognized that most law graduates would not enter academia but instead pursue a professional career in law. The Commission therefore argued that after law graduates completed the two years of “scientific” legal education, the Indian Bar Council—not Indian law faculties—would be responsible for providing courses on the practical aspects of the profession.⁶¹ Concurrently, these aspiring practitioners would be asked to “apprentice” under the tutelage of an established lawyer for a period of one year.⁶² The Commission acknowledged that the type of work asked of the apprentice might vary. Some might serve as a researcher in a lawyers office; some might regularly appear in court on behalf of the lawyer; or some might do a mixture of the two.⁶³ For the Commission, the lawyer and the Bar Council could determine the nature of the apprenticeships; the key point was that legal education would remain an intellectual and scientific endeavor.

56. *Id.* at 531.

57. *Id.* at 531-33.

58. *Id.* at 534.

59. *Id.* at 533.

60. *Id.* at 533-34.

61. *Id.* at 543-548.

62. *Id.* at 547; 550.

63. *Id.* at 547.

A year after the Law Commission issued its report, Ford's Delhi office (upon approval from New York) in 1959 called upon Stanford's Carl Spaeth again to return to India.⁶⁴ This time Ford (Delhi) asked Spaeth to spend four months collecting information on the extent to which Indian legal education had changed since he completed his mission three years prior. Ford was hoping that Spaeth might deliver a firm set of policy recommendations for how it should execute its plan of helping to establish solid legal educational institutions in India. Once again, however, Spaeth reported to Ford that the notion of an outsider making such bold recommendations was unwise. As he stated in his memo:

I [have] found the task much more difficult, much more complex, th[a]n I had anticipated. I am aware that on some issues I have not got all the essential facts. I have learnt that a study of Indian legal education compels consideration of a large complex of political, social, cultural, and economic issues that mark the present period of India's history and development. . . . At any rate, a growing awareness of many lines of uncompleted inquiry have made me reluctant to submit either an analysis or a diagnosis.⁶⁵

Consequently, Spaeth stated that any recommendations were at best "tentative and require[d] . . . additional study";⁶⁶ his proposals thus were reflections, general thoughts, and impressions on what might be done in order to improve the current state of affairs. During his extended stay, Spaeth interviewed judges, lawyers, academics, politicians, and students; he also conducted on-site inspections of fifteen different law schools throughout the country.⁶⁷ But as he highlights at the outset of his report, the 1958 findings of the Law Commission as well as the recommendations of those bodies that preceded the Commission greatly influenced his views on this subject.⁶⁸

For example, Spaeth reaffirmed past Commission-findings that Indian legal education was in a dismal state. "Although for many years high-level commissions have been reporting the sad condition of legal education, the condition seems to get worse and not better."⁶⁹ Furthermore, Spaeth also concluded—as the 1958 Law Commission report had—that the training and examination of law students lacked any real analytical and theoretical rigor.⁷⁰ He believed as well that

64. See Carl B. Spaeth, Memorandum on Indian Legal Education, March 1960 [hereinafter Spaeth 1960].

65. *Id.* at 1-2.

66. *Id.* at 12.

67. See *id.* Also see *supra* note 23. Spaeth, throughout his report, refers to law faculties, law colleges, and law departments—technically three types of Indian legal educational institutions—as "law schools." In describing Spaeth's views on these institutions, I thus shall do the same.

68. *Id.*

69. *Id.* at 2.

70. See *id.* at 5 [noting that "The idea of professional training that begins with a thorough grounding in theory and history, analysis and synthesis, and moves to sophisticated study of complex and legal problems but does not include law office and court house practice is almost totally unknown."] Also see *id.* at 13-16.

admissions-tests ought to be more stringent and that a baccalaureate degree, like the Commission recommended, should be a prerequisite.⁷¹ And he expressed disappointment that Indian law schools continued to lack a clear vision on curriculum and pedagogy.⁷²

But Spaeth did not simply parrot all of the recommendations made by the Law Commission. He raised several issues that this body did not address. For one thing, Spaeth thought it was important to understand why only "10 to 15% of the thousands of law graduates go into 'actual practice.'" ⁷³ That such a seemingly small number of law graduates were deriving economic benefits through "actual practice", he believed, had a "direct bearing [not just on the financial sector] but also on the policies and plans for legal education of the future."⁷⁴ In addition, Spaeth noted that reformers of legal education had to be sensitive to the tensions over caste, language, and university-bureaucratic politics—all which played a role in: who were admitted as students; who were hired as law teachers; and who gained employment after graduation.⁷⁵

And at one point in his report, Spaeth even challenges the Law Commission's curricular recommendations. Spaeth argued that Indian legal education should be three years, and that academic administrators ought to emphasize both theory and practice within the curriculum.⁷⁶ "The division of subjects into the categories "theoretical" and "practical", the former assigned to the universities, and the latter to the Bar Councils, is artificial and unreal."⁷⁷ Very interestingly, though, Spaeth supported his argument not by pointing to the U.S. law school model as the archetype, but instead by relying on a report issued by the 1953 All India Bar Conference.⁷⁸ Of course, the Bar may have possessed self-interested motivations for not wanting to take on the formal responsibility of solely training the country's law graduates. But that Spaeth turned to this Indian report, rather than to the U.S. law school model as the basis of his argument, illustrates a recognition that Indians were contemplating different approaches for improving legal education years before Ford began sending Americans to India. Perhaps not surprisingly then, Spaeth's final report to the Foundation reiterated a theme he stressed in 1956: that American legal education consultants avoid playing the role of "advisors" and instead be willing to serve as collaborators and even as students who

71. *Id.* at 9-13.

72. *Id.* at 3-5.

73. *Id.* at 7.

74. *Id.*

75. *Id.* at 6-9.

76. *Id.* at 19 [noting that "subjects like Procedure and Taxation should be integrated with the first two years of instruction. . . . In a legal system built in large measure on the authority of judicial precedent the lawyer should be trained from a very early point in his student days to understand the procedural setting from which the court, whether trial or appellate, declares the substantive rules."]

77. *Id.*

78. *Id.*

could learn much from their Indian counterparts.

FORD'S FIRST MAJOR FORAYS INTO CHANGING INDIAN LEGAL EDUCATIONAL INSTITUTIONS

While Carl Spaeth was Ford's main consultant on Indian legal education in the 1950s, during the 1960s the Foundation turned to Harvard law professor Arthur von Mehren to continue studying this issue.⁷⁹ At that time Professor von Mehren was one of the U.S.'s most respected authorities on comparative and international law. From August 7, 1962 to June 11, 1963, von Mehren lived in India working for Ford, where he was charged with assessing how the Indian Law Institute was functioning, as well as reporting to Ford on the state of the country's bar association, court-system, and legal educational institutions.⁸⁰ Von Mehren's June 1963 report to Ford was admittedly "very critical of India."⁸¹ This resource-poor, caste-conscious society, von Mehren concluded, remained glued to non-egalitarian customs that prevented serious social progress from taking place.⁸² A dynamic, rational legal system based on equality and individual liberty and governed by fair rules and procedures simply could not thrive in this environment because the vast majority of Indians refused to abandon their "static" traditions.⁸³

Von Mehren hypothesized that the reason so much of the mass population failed to embrace a Weberian-type legal system was because "the law on the books [in India] is, in good part, typically not an indigenous product."⁸⁴ The British of course had imposed their colonial legal system, and this was followed by the 1950 Constitution, which although drafted by an Indian Constituent Assembly, still in many ways looked like a very Western document—(perhaps not surprisingly given that many players at the Assembly were Western educated.⁸⁵) Moreover, lawyers and judges who worked within the legal system were viewed by the general populace as perpetrators of this non-applicable foreign species.⁸⁶ Von Mehren thus believed that in order for Indian society to begin accepting the democratic rule of law as legitimate, the laws themselves had to be written by Indians educated within India. Since lawyers by their professional nature had a

79. Carl Spaeth stepped down as Dean of Stanford Law School in 1962 and decided to scale back his involvement in India.

80. See Arthur von Mehren, *Aspects of Legal Scholarship and Education in India*, Confidential Memo to Ford Foundation, 1963.

81. See *id.* at 19.

82. See *id.* at 7-8.

83. *Id.*

84. *Id.*

85. *Id.* For the classic treatment of the drafting of the Indian Constitution, see GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* (1969).

86. See von Mehren, *supra* note 80 at 8 [noting that "in societies in which the law in the books does not reflect fairly accurately the society's accepted values, the lawyer tends to be looked upon as a manipulator."]

predilection towards statutes and regulations, they were in a position to make an enormous impact. But the institutions where lawyers were taught their skills needed to be serious places of learning. As he stated to Ford:

In my judgment, the most promising—indeed probably the only potentially decisive—key to the problem [of India's lack of legal and socio-economic development] is legal education. . . . [L]egal education, by shaping the men and minds that will address themselves to the problems of law, offers the best—probably the only substantial—hope of accelerating, and consciously assisting, the process.⁸⁷

Like Spaeth (whom he cited in his report to Ford⁸⁸), von Mehren believed that having Indians involved was integral to strengthening legal education. And according to von Mehren, beginning in the 1960s Ford, to its credit, started to accept this point.⁸⁹ When the University of Delhi established a committee in April of 1963 to study how to improve the Delhi Law Faculty and invited von Mehren to sit as the only non-Indian member, Ford viewed this as an opportunity for it to learn about legal education from an Indian perspective.⁹⁰

Not surprisingly, von Mehren as well expressed excitement at the chance to participate on this committee.⁹¹ Staffed by six members (including von Mehren),⁹² the Gajendragadkar Committee as it soon became called,⁹³ sought to provide “recommendations for improving legal education”⁹⁴ at Delhi University and at the other institutions in the country. Similar to the findings of the 1958 Law Commission, the Gajendragadkar Committee conceded that Indian legal education was in a horrendous state.⁹⁵ And like its predecessor, the Committee recommended: raising admissions standards and making a baccalaureate degree a pre-requisite for entrance;⁹⁶ improving teaching quality and testing methods;⁹⁷ hiring only

87. *Id.* at 9-10.

88. *Id.* at 16-17.

89. Author interview with Arthur von Mehren, February 19, 2004.

90. *Id.*

91. *Id.*

92. The other committee members were: Justice P.B. Gajendragadkar (Chair); P.N. Sapru, a member of the upper house of Parliament; S.V. Gupta, Additional [Assistant] Solicitor General of India; Dr. Anandjee, Principal, Law College Banaras; and Professor M. Ramaswamy, Dean, Delhi Law School. *See* REPORT OF THE COMMITTEE ON THE RE-ORGANISATION OF LEGAL EDUCATION IN THE UNIVERSITY OF DELHI (1964).

93. This committee was so named after its chair, Supreme Court Justice P.B. Gajendragadkar.

94. *Id.* at 1.

95. *Id.* at 1-6.

96. *Id.* at 6-10.

97. *Id.* at 10-24. The Committee, in discussing how to improve law teaching, cited the debate between Roscoe Pound (who favored the case method approach) and Morris Cohen, who believed that teachers should focus more on social reasoning and social policy than on the importance of precedent. The Committee also cited Harlan Fiske Stone's views that law has to be thought of in terms of socio-economic policy. Ultimately, the Committee opted not to adopt any particular approach and instead stated that Indian law teachers needed to experiment and find the method that most challenged and energized how students were taught.

dedicated, full-time faculty interested in scholarly publishing;⁹⁸ and constructing “a well-furnished library.”⁹⁹

The tone of the Gajendragadkar Report was openly critical of how Indian legal education had functioned since Independence.¹⁰⁰ According to von Mehren, that this criticism came from an almost completely Indian body was noteworthy.¹⁰¹ With much of the Indian legal elite recognizing how badly legal educational institutions operated, von Mehren’s suggestions and criticisms were generally not viewed as colonialist-meddling but as only supplementing the conventional wisdom.¹⁰² When von Mehren reported to Ford that: the quality of Indian law students was low; law teachers often were incompetent; facilities were shoddy; and so on, he felt confident that this assessment would be supported by people such as Justice Gajendragadkar and other Indians who had been working on improving legal education.¹⁰³ In fact, in 1966 von Mehren completed an updated critique of the Delhi Law Faculty, reiterating many of his earlier comments. But this time he had as his co-authors Bertram Willcox, a Cornell Law School professor that Ford hired to work in India, and P.K. Tripathi, Delhi Law Faculty’s own dean.¹⁰⁴

For von Mehren, Ford needed to foster cooperative relationships with the Indians, such as engaging people like Tripathi to work alongside the Americans; only then could there be any hope for improving the current state of affairs. Certainly the U.S. scholars brought to the table a great deal of expertise on legal education; but without Indian assistance even the best American advice would not go far. And the Ford Foundation seemed now to understand this point.¹⁰⁵ In 1964 von Mehren helped convince Ford officials in New York to make their first substantial

98. *Id.* at 24-29.

99. *Id.* at 29. In making this recommendation, the Committee drew upon Justice Robert Jackson’s views that a good library was the lifeblood of a productive law faculty.

100. One member of the Committee, Professor M. Ramaswamy of the University of Delhi, dissented from the Committee’s set of recommendations. Although Ramaswamy believed that law schools in India needed extensive overhauling, he disagreed with several of the majority’s recommendations. For example, Ramaswamy called for a different curricular emphasis than the majority. He also believed in adhering to the lecture method of teaching and to the current system of having exams at the end of the final year, rather than at the end of each semester—as proposed by the majority. And he argued, contrary to the majority’s view, that the teaching loads of law faculty be reduced. *See id.* at 38-73.

101. Author interview with Arthur von Mehren, February 19, 2004.

102. *Id.*

103. *See generally* von Mehren, *supra* note 80.

104. *See* Arthur von Mehren, P.K. Tripathi, and Bertram F. Willcox, Discussion Paper: Proposals Respecting the Delhi Law Faculty, Ford Foundation, August 1966.

105. Author interview with Arthur von Mehren, February 19, 2004. Also see a later memo written by Douglas Ensminger (Lead Ford Foundation official working on legal education in India), Memorandum, February 13, 1967 [noting the importance for building and maintaining cooperative ties with the Indians.] This memo is addressed to Dean Tripathi, as well as to the Director of the Indian Law Institute, Dr. G.S. Sharma, and to Dean Anandjee, Dean of the Banaras Hindu Law Faculty. I will be discussing Anandjee’s impact on Ford Foundation policy and Indian legal education in a moment.

investment in an Indian university. Rather than granting what eventually was over a half million dollars to the seemingly obvious choice, Delhi University, Ford-New York, upon von Mehren's recommendation and the recommendation of its own representative in Delhi, chose the Banaras Hindu University (BHU) Law Faculty in Uttar Pradesh as its recipient.¹⁰⁶

Many in India were surprised by Ford's choice. Banaras was an economically poor, inaccessible city with serious caste and language tensions among the population.¹⁰⁷ The university struggled for resources, and the number of potentially impressive students was much lower than in Delhi. Furthermore, the law faculty at BHU was not well-reputed, and there was little optimism that new scholars were on the horizon.¹⁰⁸ However, due to university and law faculty politics, the Delhi campus (unlike Banaras) was at least two years away from implementing the recommendations of the Gajendragadkar Committee—which included shifting from a two-year to three-year law program, an especially important condition for Ford.¹⁰⁹ Eventually in 1967 Delhi received a Ford grant,¹¹⁰ but even had Delhi been ready in 1964, BHU retained one important advantage: the presence of Dean Anandjee, an academician with whom von Mehren worked on the Gajendragadkar Committee and someone he perceived to be an ambitious, charismatic, innovative leader who had the deftness to make substantive changes in Indian legal education.¹¹¹

Indeed Arthur von Mehren had great hopes for Dean Anandjee. Anandjee was a leading scholar and teacher of labor law and jurisprudence.¹¹² He also was well-connected to politicians and judges and was highly respected within the Bar Council of India. People saw Anandjee as a real "doer," but as von Mehren recently commented, ultimately the political, social, and economic obstacles existing at Banaras Hindu University proved too great for even someone of Anandjee's abilities to overcome.¹¹³ Von Mehren based this retrospective conclusion not just on his own observations but on those described by subsequent U.S. academics that Ford hired to visit BHU during the 1960s. Between July 1966

106. According to *id.*, Ford made a \$240,000 grant to Banaras Hindu University (BHU) in 1964 and then a \$304,000 grant to BHU in 1967. The Ford representative in Delhi was a Dr. CD. Deshmukh.

107. See Arthur von Mehren, Confidential Report to Ford Foundation, January 17, 1970.

108. *Id.*

109. See Enslinger, *supra* note 105 at 3. The situation at Delhi University (D.U.) indeed was tense, and this made Ford-Delhi nervous to recommend to Ford-New York that D.U. receive the first grant. For example, there was great inter-departmental rivalry, constant strikes by students, faculty dissent within the law school, and a university administration that remained divided over whether to accept Ford money. See *id.* Also see Arthur von Mehren, Final Report to Ford, *supra* note 107.

110. *Id.*

111. Author interview with Arthur von Mehren, February 19, 2004; also see von Mehren, Final Report to Ford, *supra* note 107.

112. See Upendra Baxi, *Professor Pradyumna Kumar Tripathi: A Tribute* (2001) 5 SCC (Jour) 1, <http://www.ebc-india.com/lawyer/articles/2001v5al.htm>. [hereinafter Baxi, *A Tribute*]

113. Author interview with Arthur von Mehren, February 19, 2004.

and February 1967, Ford asked Georgetown University Law Centers Kenneth Pye to take stock of BHU's law program.¹¹⁴ Like von Mehren, Pye was very impressed with Anandjee. Anandjee, according to Pye, had:

excellent ideas and is a first rate politician both within the University and with the U.G.C. [University Grant Commission].¹¹⁵ He has a deep personal dedication to the future of the Law School. I have met no one else who could have achieved as much as he has accomplished thus far at Banaras.¹¹⁶

Yet Pye also found many serious problems present at BHU. "Library facilities were completely inadequate,"¹¹⁷ courses did not have syllabi, faculty aptitude varied greatly, and basic features such as copying machines were not available. In addition, there were pedagogical issues: because there were no textbooks available, the only information students received on subjects they were studying would be from the (often dry) lectures of their professors.¹¹⁸ Add to this that the "quality of the students . . . [was] extremely low,"¹¹⁹ which made the education process both difficult and frustrating for professors and contributed to weak morale among the faculty.¹²⁰

These major hurdles facing BHU left Pye with "substantial doubts that anyone can build a law school of international excellence at Banaras."¹²¹ But he was not without any hope. Although Ford had donated nearly a quarter of a million dollars to BHU, more funding directed at improving the deficiencies he cited would give the school the best chance for succeeding.¹²² It is true Pye believed that Ford's financial commitment needed to be tied to some tangible changes at BHU. However, more importantly for him was that Ford clarify to the Indians that its American consultants were in India only to "assist in the improvement of the legal

114. See A. Kenneth Pye, Progress Report on Grant to Law College, Banaras Hindu University: 8 July, 1966—6 February, 1967. (Memorandum to Dr. Douglas Ensminger, Ford Foundation.) [hereinafter Pye, 1967 Memo]. In 1968, Pye became Dean at Duke Law School.

115. See *id.* at 6. The University Grant Commission is a central governmental body responsible for overseeing how institutions of higher learning in India operate, administratively, financially, and educationally. Among other things, the UGC makes recommendations to the central and state governments on the type of funding institutions of higher learning should receive. See <http://www.ugc.ac.in/>.

116. See *id.* at 6.

117. *Id.* at 3.

118. *Id.* at 19. Also see A. Kenneth Pye, Status of the Grant to Banaras Hindu University Law College, April 27, 1969 (Ford Foundation Memorandum) [hereinafter Pye, 1969 Memo].

119. Pye, 1967 Memo, *supra* note 114 at 16.

120. *Id.* at 16; Pye 1969, *supra* note 118, at 5-6.

121. Pye, 1967 Memo, *supra* note 114 at 23 [noting, however, that if anyone could reform the system, "Dr. Anandjee is the man."]

122. One reason the \$240,000 was not proving to be enough was because in order to acquire even the most basic of library-collections, according to Pye, nearly \$100,000 would have to be spent. If BHU hoped to do other things, such as attract strong faculty or build quality dorms for students, more funding would be needed. See Pye, 1967 Memo, *supra* note 114 at 10-12.

education and legal process”¹²³—rather than to devise a specific (Western) formula for their hosts to follow. Perhaps for this reason, Pye was emphatic that BHU work with other institutions in the country, such as the Delhi Law Faculty and Indian Law Institute, as a means of building a true Indian legal community.¹²⁴

It seems as though Pye’s message made an impression on policy-makers at Ford. Just five days after receiving Pye’s memo, Douglas Ensminger, Ford’s top representative in Delhi, addressed a letter to Dean Anandjee as well as to Dean P.K. Tripathi of the Delhi Law Faculty and G.S. Sharma, the Director of the Indian Law Institute (ILI).¹²⁵ Ensminger proposed bringing these three Indian educators together for a one-day seminar in March of 1967 in order to foster inter-institutional cooperation and to devise strategies to improve the educational quality at Delhi and Banaras.¹²⁶ It is unclear whether this meeting ever took place; Ford did not provide documentation regarding this proposed seminar. However, Ford did ask its subsequent American consultants to study: a. the likelihood that the three institutions would meet regularly to discuss issues concerning improving legal education; and b. whether a coordinated effort among these institutions would in fact lead to such improvement.¹²⁷

Professor Bertram Willcox from Cornell Law School was the first to report back to Ford on these two questions. Willcox had been in India working for Ford, on-and-off, for nearly four years.¹²⁸ By 1967 Willcox knew the Indian legal educational landscape arguably as well as anyone in the country. Unlike Pye, he doubted that bringing together the heads of the ILI and the Banaras and Delhi law faculties would lead to constructive discourse that then could be translated into bettering the Indian legal education model.¹²⁹ For Willcox, the main problems inhibiting such cooperation were the internal politics present at each of the institutions, and perhaps surprisingly, his view that the respective leaders were really not all that capable.¹³⁰

For example, the ILI suffered, according to Willcox, because neither Director Sharma nor his predecessor, M.P. Jain, knew how to manage

123. *Id.* at 21.

124. *Id.* at 20-22.

125. See Ensminger, *supra* note 105. Recall, the ILI was established to serve as the major legal Indian think-tank for those interested in producing scholarly publications and fine-tuning their pedagogical techniques. By 1967, however, the ILI was viewed by the American consultants as a second rate institution, with few true scholars serving as fellows and little attention given to teaching.

126. *Id.* at 3.

127. I shall be discussing the reports of these consultants’ findings forthwith.

128. See Bertram Willcox, Confidential Terminal Report, Sept. 1. 1967 (Memo to Ford Foundation.) Willcox first went to India in 1963. While he was there he helped the faculties at Banaras and Delhi Law Schools develop labor law courses and casebooks. And he also established training sessions on teaching at the Indian Law Institute between 1963-1965.

129. *Id.*

130. *Id.* at 2-13.

staff or breed cooperation among those within the institution. Both men practiced favoritism and ruled by decree rather than by consensus; as a result they had little legitimacy among their colleagues.¹³¹ Willcox found similar leadership problems to exist within the two law faculties. At Delhi, Willcox viewed Dean P.K. Tripathi as "an aloof and unsympathetic dean-tyrant."¹³² And at Banaras, although Willcox saw Dean Anandjee as a nice person, he nonetheless characterized Anandjee as an ineffective leader with a chronic tendency to procrastinate and to leave important decisions unmade.¹³³

Indeed several other Ford consultants after Willcox came to similar conclusions. Ford had hired a group of ambitious American legal academics to visit India during the late 1960s. For example, Professors Julius Getman and John H. Jackson each spent time at the ILI.¹³⁴ Harry W. Jones, Kenneth L. Penegar, and Arthur W. Murphy each spent months at Delhi University.¹³⁵ And C. Dallas Sands was at Banaras for a significant period during 1968.¹³⁶ Along with citing problems of leadership, the consultants reiterated other challenges that continued to hobble these centers of learning. Insufficient resources, low quality staff, students, and scholars, weak library facilities, and poor physical infrastructure were just some of the hurdles that the ILI and Delhi and Banaras law campuses continued to face.¹³⁷

But in reviewing each of these reports a common theme that once again emerges is that of the American professors urging Ford to remain sensitive to the fact that India was not the United States; it was thus unfair to measure and evaluate the progress of Indian legal educational institutions through a Western institutional lens. Harry Jones, for example,

131. As Willcox reports: "Dr. M.P. Jain showed real ability in many ways. He is one of the best legal scholars in India. But as an administrator he fostered factionalism and discontent. He was hampered, to be sure, by [his] judge-rule [behavior], and he certainly lacked needed authority. Dr. Gyan Sharma obtained that authority, but then proceeded to abuse it through pride of place, shiftiness, and arbitrary and dictatorial rule." (*Id.* at 13.)

132. *Id.* at 14. Although this characterization is quite at odds with how an Indian colleague and prominent Indian academic viewed Tripathi. See Baxi, A Tribute, *supra* note 112.

133. Willcox reports: "Dean Anandjee does not get things done, and he does not delegate," and that he is unable to act in a politically savvy manner to deal with those who may be angered at difficult decisions that need to be made. *Id.*

134. See Julius Getman, End of Tour Report, June 12, 1968 (Memo to Ford Foundation); John H. Jackson, Short Reflections on the Indian Law Institute, May 6, 1969 (Memo to Ford Foundation.)

135. See Harry W. Jones, Observations and Impressions of Delhi University Faculty of Law, May 7, 1968 (Memo to Ford Foundation.); Kenneth L. Penegar, End of Assignment Report, July 11, 1968 (Memo to Ford Foundation.); Arthur W. Murphy, Developments in Legal Education at Delhi University, Implications for India and Recommendations, June 9, 1970; (Memo to Ford Foundation.)

136. See C. Dallas Sands, Terminal Report from Banaras, June 1, 1968 (Memo to Ford Foundation.). Note, Julius Getman also spent time in Banaras and describes his visit in his report, *see supra* note 134.

137. See *supra* notes 131-133.

warned that because "the difficulties here are so great . . . the Foundation and its legal consultants should be prepared to find satisfaction in relatively small gains and to grant time and patient understanding" to those in India with whom they are working.¹³⁸ In addition, the consultants repeated that Ford's funding of legal educational reforms might be perceived as the latest form of Western colonization. As Jones goes on to say:

"[M]any Indian scholars, including a good number of the most distinguished, are somewhat uneasy about the American presence in Indian universities and apprehensive that our visits to Indian law faculties may result in what is sloganized here as the "Americanization" of Indian legal education. . . . We can describe our model for our Indian colleagues, and report our successful and unsuccessful experience with it for such guidance that may provide for Indian education reform, but effective legal education in India, in the last analysis, must reflect Indian cultural conditions and distinctively Indian genius."¹³⁹

Jones' advice to Ford was echoed by others. Dallas Sands, who spent time at Banaras, reported to Ford that he perceived his (Western) presence on campus as "inhibit[ing] free discussion"¹⁴⁰ among his Indian colleagues. Sands stated that in addition to the many institutional problems facing Banaras, Ford needed to recognize that "an outsider is not the best one to push an idea of . . . [educational reform] in the Indian system."¹⁴¹ In his report describing his visit to Banaras as well as to the ILLI, Julius Getman conceded that he was all but dismissed by officials from both institutions.¹⁴² And during his stay at Delhi University, Kenneth Penegard also stated that he felt an "element of resentment towards outside influence."¹⁴³

By the end of the 1960s policymakers in Ford's New Delhi office began seriously to reconsider whether in fact the American law school model could thrive in India. The evaluations from their consultants detailed the many Herculean obstacles that existed within the Indian environment. Still each of these consultants maintained hope that with sufficient funding and continued patience Ford's goal could succeed.¹⁴⁴ In 1971, however, Ford received the most critical assessment of its program

138. Jones, *supra* note 135 at 1. Also see Arthur Murphy's comments, *supra* note 135 at 33, noting that "India should not automatically follow the American pattern of undifferentiated law schools training 'generalists.'" (*Id.* at Appendix 3). Also see Murphy arguing that "at some point the United States formula becomes wasteful and even, to some extent, self defeating" for India to follow." (*Id.* at 33).

139. *Id.* at 10.

140. Sands, *supra* note 136 at 11.

141. *Id.* at 15. (Sands, in fact, goes on to say that "from a professional standpoint I was mostly wasting my time this year, and there is not really much gratification in the feeling that I have been learning a great deal more (about India) than I have been contributing professionally." *Id.* at 20).

142. Getman, *supra* note 134 at 2-7.

143. Penegard, *supra* note 135 at 12. Although Penegard noted that this resentment was found less among law faculty and more among faculty from other university departments.

144. In fact, see Arthur von Mehren's final memo to Ford on this subject discusses how the next "five years or so should give a basis for assessing" all that has been done with respect to legal education in India. (Jan. 17, 1970).

to date. The report from this particular consultant ultimately led to the end of Ford's legal education work in India.

BOALT HALL'S ROBERT COLE AND HIS EVALUATION OF FORD'S PROGRAM

In 1971 California law professor Robert Cole traveled to India to provide a status report to Ford.¹⁴⁵ Seven years had passed since Ford made its first grant to the Banaras Law Faculty.¹⁴⁶ Given the critical assessments of its previous consultants, the New Delhi and New York offices were interested in having a thorough evaluation done on its pilot program in Banaras. Ford thus asked Cole to spend nearly eight months in India, scrutinizing the Banaras law campus and then surveying the overall landscape of legal education in the country.¹⁴⁷ Cole produced the most detailed report Ford had received on this subject to date. Spanning sixty-five single-spaced pages and covering dozens of interrelated issues, Cole offered a number of "negative criticisms"¹⁴⁸ on the direction in which Indian legal education was moving as well as on Ford's current program.

Cole argued that Ford needed to look beyond what was occurring inside Indian legal educational institutions. For example, the functioning of—and opportunities provided by—the Indian bar, according to Cole, was directly impacting legal education in "profound and adverse" ways.¹⁴⁹ Most lawyers were struggling solo practitioners who only knew one thing: litigation.¹⁵⁰ Lawyers rarely engaged in transactional practice or public interest service; such work was done by other actors who tended (negatively) to view lawyers as courtroom specialists only to be called on when litigation could not be avoided.¹⁵¹ Furthermore, few if any law graduates per year landed a good-paying job as an apprentice with a practicing lawyer.¹⁵² And Cole had collected data suggesting that a significant percentage of law graduates opted *not* to pursue a career in law.¹⁵³ "Of course, it does not

145. See Robert H. Cole, Observations on Legal Education in India, End of Tour Report, Sept. 14, 1971 (Memo to Ford).

146. See *id.*

147. *Id.* at 1-2.

148. *Id.* at 2.

149. *Id.* at 4.

150. *Id.* at 6-9.

151. *Id.*

152. *Id.* at 2-9.

153. For example, Cole cites a study done by Professor Marc Galanter noting "that while the number of enrolled advocates increased by 3,000 between 1952 and 1958 (or 500/year), the number of graduates holding law degrees increased by 37,000." Cole also notes that "by 1965, the number of degrees awarded might have increased by 50% or more, for according to the Education Commission, there were then 32,000 enrolled law students, which could well result in an annual average of 9,000 graduates (as against 6,000/year for 1952-58)." *Id.* at 3. Cole also cites a study by T.G. Bastedo who found that only "between one third and one half of law students definitely intend to pursue a career in law practice." *Id.* For the full study see, T.G. Bastedo, 11 L. & Soc'y REV. 269 (1968-1969).

follow that the non-lawyer law graduates will go unemployed.”¹⁵⁴ But Cole wanted Ford to understand that the limited type of law lawyers practiced, the reputation the lawyers had among the public, the lack of good employment opportunities for law graduates, and that so many law graduates chose not to practice indeed deadened student-motivation towards learning in the classroom.¹⁵⁵ Such factors, moreover, inhibited teacher-enthusiasm. “A faculty is bound to feel somewhat irrelevant to the profession if the bulk of the product of legal education does not find its way into the profession.”¹⁵⁶

The structure of the profession also impacted legal education in one other important way, according to Cole. The reason why much of the public (including students and faculty) felt disconnected to the legal profession was because of how lawyers obtained their fees—mainly on the basis of how frequently they appeared in court.¹⁵⁷ In order to maximize their earnings, Cole found that lawyers purposely kept cases in court for long periods of time.¹⁵⁸ Even worse, Cole reported that he knew of lawyers who engaged in outright illegal activity, from bribing judges to padding fee-statements to lying about appearances they made in court.¹⁵⁹ With such behavior being quite common, law courses purporting to teach legal ethics were hardly taken seriously by either students or professors.¹⁶⁰ Cole found this lack of interest students had in learning—and professors had in teaching—ethics and professional responsibility to be “definitely depressing to professional education.”¹⁶¹

Many of Cole’s other criticisms were reiterations of points made by Ford’s past consultants. But the manner in which he articulated his position was in a much dire tone. For instance, while like his predecessors he despaired over how students learned—mainly through memorization of black-letter rules—the process, according to Cole, had larger, negative ramifications for all of society. As he asserted:

“The cost [in the way students are taught, and then in turn the way they practice], I firmly believe, is a major net loss to the nation of the potential professional product of tens of thousands of highly trained people in helping to solve the problems of clients better . . . to maximize the satisfaction of private needs, to

154. In fact, from Cole’s own work as well as work he cites from Galanter and Bastedo, there is a sense that eventually “all of the law graduates find [non-practicing] jobs of some sort.” Cole, *supra* note 145 at 3.

155. *Id.* at 4-5.

156. *Id.* at 4.

157. *Id.* at 5. For a full discussion of this aspect of the legal profession, see Jayanth K. Krishnan, *Social Policy Advocacy and the Role of the Courts in India*, 21 AM. ASIAN REV. 93 (2003); Marc Galanter & Jayanth K. Krishnan, “*Bread for the Poor*”: Access to Justice and the Rights of the Needy in India, HASTINGS L.J. (forthcoming 2004).

158. See Cole, *supra* note 145 at 5-6. Lawyers did this primarily by abusing the numerous interlocutory appeals that are allowed under the Indian system. This abuse has continued to the present day, and for a discussion of this point see, Krishnan, *supra* note 157; Galanter & Krishnan, *supra* note 157.

159. Cole, *supra* note 145 at 5-6.

160. *Id.* at 6.

161. *Id.*

contribute to the private solution of public problems, and to promote the stabilizing, democratizing functions and respect for the legal system."¹⁶²

In keeping with his "grandiose"¹⁶³ analysis, Cole urged Ford to view this woeful type of pedagogical instruction as a function of the socio-economic and political ills plaguing Indian society. For one thing, because of poor salaries, low social status, and unpleasant physical working environments, the legal teaching profession did not attract the top legal minds. It was therefore unfair to expect those who entered the academy to perform at anything beyond a mediocre level in the classroom.¹⁶⁴

In addition, legal educators had to work within the larger university structure, which was very political and often iniquitous.¹⁶⁵ Cole tried to impress upon Ford the need to understand that overhauling legal education would be a monumental task because the universities under which law schools operated were: resistant to change;¹⁶⁶ intensely bureaucratic; corrupt; wedded to outdated standards for evaluating employees; and highly inefficient.¹⁶⁷ And universities themselves operated in the shadow of the intrusive central government, which along with appointing administration officials, setting admissions policies, and writing the schools' rules of governance also allocated resources through an agency known as the University Grants Commission (UGC).¹⁶⁸ The priorities of the government thus became the priorities of university officials. For reasons stated above though, legal education was a "low priority."¹⁶⁹ The government was not interested in revamping how it functioned and appeared content with the current situation.¹⁷⁰ Law faculty who sought to institute even the slightest changes faced resistance from both their own university and the government.¹⁷¹ Because of such institutional hostility to innovation and reform, most legal educators eventually resigned themselves to the belief that the status quo was permanent and that they made little difference in the grand scheme of the educational process.¹⁷²

162. *Id.* at 10.

163. *Id.*

164. *Id.* at 9-12; 23-4. (And note, lackluster professors within the law schools deterred the brightest students from wanting to enroll in these institutions. Mediocre to poor students only further disillusioned teachers and this cycle continued, thereby perpetuating the status quo within Indian law schools.)

165. *Id.* at 12-17.

166. *See id.* at 14 (noting that "overall, this system is calculated to say no and not to say yes. It stifles innovation and frustrates the individualism and self-determination that one associates with the faculty man and that forms the conditions for his self regulation and academic freedom. The system is calculated to reduce his self respect.")

167. *See id.* at 12-17.

168. *Id.* at 21-23. The government of the state in which the university was located also played a role in how university administration operated.

169. *Id.* at 22.

170. *Id.*

171. *Id.*

172. *See id.* at 14.

Cole then proceeded to cite other familiar problems. Inadequate library facilities and textbooks, disputes over what language should be used in the classroom, lack of faculty scholarship, and weak administrative leaders all contributed to hampering legal education.¹⁷³ Student-discipline was also an issue; cheating and truancy were common and the overall quality of the students he observed was sub-par.¹⁷⁴ And most Indian law schools were simply not tying their educational goals to the practice itself. According to Cole, this ultimately affected the quality of: statutes passed by legislators, judgments rendered by courts; and legal services provided to private clients as well as to public interest causes.¹⁷⁵

Based on his in-depth observations, Cole made a series of sweeping recommendations that hugely impacted Ford's legal education program. First, Cole called for revamping how governmental and Ford resources were being spent. More money per student needed to be invested.¹⁷⁶ Legal educational institutions also had to stop admitting, educating, and thus investing in low quality students, as this practice was draining already scarce resources and placing into the market an oversupply of unemployable graduates.¹⁷⁷ Cole argued, too, that the manner in which law campuses were funded had to be more transparent, and that government officials and university administrators needed to be held accountable for their decisions.¹⁷⁸

The legal profession required diversification as well. Cole pressed Ford to encourage the government, the Bar Council of India, and legal educational institutions to work cooperatively in developing new opportunities for graduates to pursue a legal career.¹⁷⁹ He also believed that Ford could help fund surveys that examined the desires and needs of practicing lawyers, law students, law graduates, and faculty. And Ford could support teaching-training programs for Indian law faculty by developing rigorous LL.M. programs within the country that focused on pedagogy, and by sending promising Indian teachers abroad to learn about teaching techniques in other law school environments.¹⁸⁰

173. *See id.* 17-34.

174. *See id.* 17-21 (Cole also noted that many students also could simply not afford to purchase textbooks. Obviously, he found no fault in the students for this, but he did note that this was another factor affecting student participation and "enthusiasm" towards their education.)

175. *Id.* at 26-27.

176. *Id.* at 27-34.

177. *Id.* at 30-33.

178. *Id.* at 34-35.

179. *Id.* at 35-37. (Cole specifically believed that lawyers could be useful in working in government policy jobs or in the public interest sector. However, to that point these were two areas that were dominated by civil servants and social workers, respectively. But if legal education was structured in such a way where graduates would leave law school with some sense of how to work in these types of environments, then was no reason why they could not forge a career in such sectors.)

180. *Id.* at 42-49. (Cole did not believe, however, that one-year LL.M. programs at U.S. law schools were useful for foreign teachers. These programs have been "inadequate and insensitive," Cole noted, to the needs of foreign teachers. He thus suggested that if foreign

Although Cole's suggestions included vast reforms, he did think that Ford ought to continue playing a role in legal education.¹⁸¹ He was even complimentary of the advancements that law faculties had made to date (with Ford's assistance), citing that "incremental improvements" in the culture of legal education was noticeable.¹⁸² But if legal education was substantively to change in India, then real reforms and greater financial commitments from Ford and the government of India needed to be made. Like his predecessors though Cole believed that ultimately this change had to come from within India. Only those who knew India's culture, colonial and post-colonial history, and the intricate legal system could make any meaningful difference. As he concluded: "The best thing is to find Indian members of the legal community with imagination and a drive to get things done, and give them some resources to get things done."¹⁸³

After receiving Robert Cole's report, and then reviewing all the conclusions of its past consultants, Ford policy-makers at the end of 1971 in both Delhi and New York re-prioritized their goals for India.¹⁸⁴ Although Ford expended great time, energy, and resources to study and improve legal education, the bulk of its work in India remained focused on a different area: agricultural reform.¹⁸⁵ Ford officials decided that they would continue to work on the Indian agricultural sector; however, because the task of reforming legal education now seemed more monumental than ever, the Foundation ceased concentrating on this subject.¹⁸⁶ The sentiment among policy-makers was that the problems identified by the American consultants would take many years to address and require a substantially greater financial contribution from Ford; and even then there was little guarantee that these efforts would succeed.

So what happened after 1971? As the Ford consultants believed, there were Indians who had their own innovative ideas on reforming legal education. Many of these individuals indeed sought to make sweeping changes to how law faculties operated. But ironically, my research also reveals that

teachers were to come to the U.S., that they be exposed to programs that specifically focus on what foreign teachers can learn and then take back with them to their home countries to make them effective educators.)

181. *Id.* at 59-62.

182. *Id.* at 59 (noting, for example, that there was an increase in the production of better casebooks; that law teachers were beginning to move away from the pure lecture method of teaching; that moot court teams, legal writing exercises, and problem-based approaches to the law were becoming more frequent in classroom; and that faculty was beginning to see the importance of research and publications. See also *Id.* at 11-12.)

183. *Id.* at 62. Although Cole, quite directly, stated that finding these "Indian members of the legal community" would be difficult as there is a "dearth of such people" in the country at present. (*Id.*)

184. Author interview with Arthur von Mehren, February 19, 2004; Author interview with Carolyn Elliott, (former Ford official), April 1, 2004.

185. *Id.* Also see Ford Website: www.ford.org.

186. Author interview with Arthur von Mehren, February 19, 2004; Author interview with Carolyn Elliott, (former Ford official), April 1, 2004

in fact many of the changes that were proposed and eventually occurred drew upon the suggestions offered by the American professors.

DEVELOPMENTS IN INDIAN LEGAL EDUCATION: THE POST-FORD YEARS

Several Indian governmental commissions were interested in revamping legal education even before the Ford Foundation entered the scene. During the British era, various Indian committees examined this issue.¹⁸⁷ Then after Independence, the 1958 Law Commission report and the 1964 Gajendragadkar report both focused on reforming Indian law schools.¹⁸⁸ (Recall that some of the U.S. consultants even referenced these two latter studies in their memos to Ford.¹⁸⁹) But the 1960s and 1970s saw a young generation of Indian academics begin to offer their own new and exciting proposals.

One of these innovators was a little-known law professor named N.R. Madhava Menon. Although a south Indian by origin,¹⁹⁰ Menon began his academic career in 1960 in the northern state of Uttar Pradesh at Aligarh University.¹⁹¹ In 1965, Menon moved to the Delhi University Law Faculty, where he came into frequent contact with several of the American law professors working for Ford.¹⁹² According to Menon, this exposure highlighted to him the importance of Indian and American legal educators working together and learning from one another.¹⁹³

Like Arthur von Mehren, Carl Spaeth, Robert Cole and others, Menon early on believed that Indian legal education was far from adequate. But during the 1960s, the Bar Council of India (BCI) had statutory authority to regulate education.¹⁹⁴ Contrary to the views of the American consultants as well as Menon, the BCI at that time saw law schools as purely vocational institutions.¹⁹⁵ To be sure, the BCI leadership had its

187. See *supra* notes 46-59.

188. See *id.*

189. Among these professors included Carl Spaeth, H.C.L. Merrillat, and Arthur von Mehren.

190. Menon was born and raised in the southern state of Kerala.

191. From February 29, 2004 to March 2nd, 2004, the author spent three full days at the National Judicial Academy (NJA), in Bhopal, Madhya Pradesh, where Menon currently serves as the institution's director. During this time, the author interviewed Menon on several different occasions and intensely observed Menon's administrative skills. (The NJA is a new institution that formed one year ago, with the purpose of providing training and education to judges in India.) The information on which the author basis his discussion of Menon comes from these interview sessions as well as from a brief forty page autobiography entitled, *EXCELLENCE IN HIGHER EDUCATION: SOME INSIGHTS FROM THE NATIONAL LAW SCHOOL EXPERIENCE*, by Dr. N.R. Madhava Menon, August 1998 (on file with author) [hereinafter *EXCELLENCE IN HIGHER EDUCATION*.]

192. Author interview with Menon, February 29, 2004.

193. *Id.*

194. *Id.*

195. *Id.*

own agenda; these leaders were not from the elite sections of Indian society nor were most of them upper castes.¹⁹⁶ They believed that for too long ordinary Indians lacked access to the legal process, and to remedy this problem, the BCI approved the opening of hundreds of new assembly-line law colleges during the 1960s and 1970s.¹⁹⁷ The rationale was that the more opportunities everyday Indians had to legal education, the more likely the law and those who practiced within the profession would reflect the values of the vast majority of the population.¹⁹⁸

Menon sympathized with the BCI's mission. As someone committed to the egalitarian principles set forth in the Indian constitution, Menon too believed that law and legal education needed to serve all of society.¹⁹⁹ However, the many BCI-sanctioned institutions cropping up simply did not provide students with a solid education. The problems noted by Ford's American consultants were ones that troubled Menon as well.²⁰⁰ Worried that Indian legal education was spiraling downwards, Menon took a sabbatical from Delhi University during the 1969-1970 academic-year to travel to Columbia University's Law School.²⁰¹ Menon had learned, partly through his interaction with Professor Harry Jones (mentioned above) who had visited Delhi University, that Columbia prided itself on merging both the theory and practice of law.²⁰² Menon eagerly sought to learn how Columbia had accomplished this mission.

This sabbatical that Menon took would turn out to be the most important one-year of his professional life.²⁰³ "I realized so many possibilities for our law schools here [in India] after going to Columbia."²⁰⁴ For example, Menon spent a great deal of time observing how Columbia's clinical legal aid program operated. He was inspired by how law students, under the supervision of dedicated professors, could serve the needs of clients who otherwise would not receive legal representation.²⁰⁵ Menon was also influenced by Columbia's Walter Gellhorn, an administrative

196. *Id.*

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.* For example, Menon decried the lecture-based, rule-oriented manner in which students were taught. There was no theory offered in the classrooms. Students were simply educated on the rules of law; teachers did not publish; the quality of the atmosphere in these institutions was sub-optimal; and according to Menon ultimately three-quarters of these law schools were miserable, degree-stamping institutional failures, while the remaining one-quarter barely could qualify as mediocre.

201. *Id.*; also see EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 38. Note, the latter citation states that Menon was a fellow at Columbia from 1970-71, but in his interview with the author Menon noted that the years of his sabbatical occurred during 1969-70.

202. *Id.* Recall Professor Harry Jones was a distinguished professor at Columbia Law School for several years.

203. *Id.*

204. Author interview with Menon, Feb. 29, 2004.

205. *Id.*

law expert who advocated that law professors include a practical dimension to even the most doctrinally-based courses.²⁰⁶ And Menon received his first exposure to how law could be taught in conjunction with other academic disciplines. He was enthralled by the work several Columbia professors were doing on the intersection between law and social science.²⁰⁷ In furtherance of this interest, in the summer of 1970 Menon enrolled in a six-week workshop taught by Professors Marc Galanter and Richard Schwartz at Northwestern University Law School that specifically examined law and social science and the application of empirical methods of research in India.²⁰⁸

Menon was inspired and energized by what he learned in the United States. He especially wanted to establish a small legal aid clinic at Delhi University. But confirming Robert Cole's description of university politics in India, Menon knew that his supervising administration would place bureaucratic obstacles in his way and be reluctant to fund this project. Thus before leaving Columbia, Menon befriended several Indians who too were interested in issues of social justice back in their home country. Through tireless efforts, Menon worked to raise two thousand dollars—a large amount by Indian standards—from his contacts at Columbia that he then took with him back to Delhi creating the university's first-ever legal aid clinic.²⁰⁹

Menon's next step was to generate student enthusiasm for his clinic. In its first year, the clinic had twelve students who, under Menon's supervision, worked primarily on providing legal assistance to prisoners.²¹⁰ One of these cases actually made national news, as Menon and his students helped to exonerate a wrongfully convicted defendant who was spending time in a New Delhi prison.²¹¹ This episode, together with his fundraising abilities in the U.S., his zeal for emphasizing both the theoretical and practical aspects of the law, and his increasingly frequent editorial contributions in newspapers on the subject of reforming legal education brought Menon a great deal of attention within judicial circles.

In particular, Supreme Court Justice Krishna Iyer in 1973 invited Menon to help write a national report on the status of access to justice in

206. *Id.* Menon noted that he was inspired by Gellhorn also because the Columbia professor taught students that there was a social or public interest dimension to how law was practiced. Public policy was an important element to Gellhorn's teaching and Menon noted that after seeing Gellhorn perform in the classroom, he planned to encourage his fellow colleagues in India to consider teaching in this manner as well.

207. *Id.* During this time the law and society movement in the U.S. was just begin to develop into a formal organization. Menon stated that he found himself very attracted to this movement to thinking about law in an interdisciplinary fashion.

208. *Id.* Also, author interview with Professor Marc Galanter, April 1, 2004. Note this workshop was sponsored by the International Legal Center, which was a Ford-funded institute.

209. Author interview with Menon, Feb. 29, 2004. Menon ran this clinic with a fellow colleague, Professor Narasima Swamy.

210. *Id.*

211. *Id.*

India.²¹² Menon took this opportunity to promote legal aid clinics on law campuses.²¹³ He also argued that law faculties had to reach out to—and work with—public interest non-governmental organizations that were focusing on helping the poor realize their rights.²¹⁴ And the educational curriculum for law students required a shift from a purely doctrinal concentration to one that examined how law intersected with larger public policy issues.²¹⁵ Menon's underlying point was that legal educational institutions now had an opening; the time was ripe to bring into the fold millions of Indians who felt marginalized by the legal process.

Although he continued trying to enact various reforms while at Delhi University, the institutional structure within which Menon worked limited his ability to make substantive change. Therefore in 1974, when Menon received an invitation from a state in south-eastern India, Pondicherry, to start up a new law program affiliated with that state's main college, he decided to pursue this exciting opportunity. As he noted, he "had never been to Pondicherry before,"²¹⁶ nor did he have "experience of heading an academic institution, much less building up one . . . [but he] decided to take it as a challenge"²¹⁷ and test whether his ideas could work.²¹⁸

Menon proceeded to spend four years in Pondicherry.²¹⁹ During his tenure he encountered great difficulties. While the bureaucratic red-tape at Delhi University was thought to be problematic, it did not compare to the nightmarish conditions present at Pondicherry College. Administrators, teachers, and students who expected the new law center to function like other long-standing Indian legal educational institutions refused even to discuss many of Menon's "radical"²²⁰ proposals, such as recognizing and rewarding faculty scholarship, improving existing library facilities, introducing new methods of testing, and increasing admissions standards.²²¹ As he noted, that the College could "kill [such] innovation and experimentation was far beyond my imagination and comprehension."²²²

Nevertheless, Menon came away from Pondicherry a much wiser

212. See REPORT OF THE EXPERT COMMITTEE ON LEGAL AID—PROCESSUAL JUSTICE TO THE PEOPLE (India Ministry of Law, Justice & Company Affairs, Department of Legal Affairs, 1973) [hereinafter REPORT OF THE EXPERT COMMITTEE]. Krishna Iyer saw this report as a radical critique of the Indian legal process.

213. *Id.*

214. *Id.*

215. *Id.*

216. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 8. Actually, Pondicherry is not exactly a state, but what the Indian government refers to as a "union territory." There are currently six union territories in India.

217. *Id.*

218. Author interview with Menon, Feb. 29, 2004.

219. *Id.*; also see EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 8.

220. Author interview with Menon, Feb. 29, 2004; this was how many people at the College viewed Menon's ideas.

221. *Id.*

222. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 8.

administrator and manager.²²³ To many people's surprise he was even able to make three major reforms. First, he persuaded grudging faculty members to avoid using the standard lecture format and instead adopt a more case-method, problem-based approach to educating students.²²⁴ Second, Menon instituted a clinical education program, which enabled students and professors to work with clients in the community. Third, the curriculum he proposed, which was ultimately adopted, drew on the lessons he learned while at Columbia Law School.²²⁵ Standard doctrinal classes were taught not in a rule-oriented manner, but with an eye towards larger issues concerning legal theory, public policy, and social justice. And students now had the opportunity to enroll in more practical, skills-based courses, such as statutory drafting.²²⁶

Four years, however, proved long enough for Menon. He was tired and opted not to renew his contract at Pondicherry. In 1978 Menon returned to Delhi University, but his accomplishments during his time away had become well-known. For many observers, perhaps most impressive about Menon's tenure at Pondicherry was that he continued to pursue his goals despite what was occurring politically in the country. From 1975 to 1977 Prime Minister Indira Gandhi suspended the country's democratic constitution. During this Emergency Period, Mrs. Gandhi ruled by decree, arguing that the state faced a national security threat from opposition forces in the country.²²⁷ The Prime Minister imprisoned thousands of political opponents and rights activists and used the legal system and the rule of law for her own instrumental purposes.²²⁸

Given Menon's belief that law faculties ought to help empower the traditionally under-represented and politically marginalized, one might think that he and the Pondicherry Law College would have been targeted by the Indira Gandhi government. But Menon explained that neither he nor his law faculty suffered retribution during the Emergency Period.²²⁹

223. *Id.* (noting "four years at Pondicherry enabled me to understand the dynamics of institutional structures and the mechanics of institution building in situations not necessarily receptive to change. I got intimate lessons of management which in the final analysis, dictated the pace and directions of change in every setting.")

224. Author interview with Menon, Feb. 29, 2004.

225. *Id.*

226. *Id.*

227. *Id.* Grassroots activists remained skeptical; they cited several self-interested factors that caused her to suspend the constitution. The economy was weak. The public disapproved of her policies, leading to opposition leaders calling on the military to oust her from power. And she was convicted of corruption charges in a state court in Gujarat. See *infra* note 228.

228. For a selected set of insightful readings discussing the Emergency Period, see JAMES MANOR, *NEHRU TO THE NINETIES: THE CHANGING OFFICE OF PRIME MINISTER IN INDIA* (1994), STANLEY WOLPERT, *THE NEW HISTORY OF INDIA* (1998); ATUL KOHLI, *THE STATE AND POVERTY IN INDIA: THE POLITICS OF REFORM* (1987); ATUL KOHLI, *DEMOCRACY AND DISCONTENT: INDIA'S GROWING CRISIS OF GOVERNABILITY*; GRANVILLE AUSTIN, *WORKING A DEMOCRATIC CONSTITUTION* (2000).

229. Author interview with Menon, Feb. 29, 2004.

One reason he speculated that Mrs. Gandhi “left [him] alone”²³⁰ was that perhaps she saw her Emergency Rule agenda, a main part of which included a “war on poverty,” as being related to Menon’s goal of providing the poor with more education of their rights as citizens.²³¹ In her rhetoric, Menon recalled, Mrs. Gandhi would often state that she had to suspend the constitution in order to protect the interests of the poor.²³² Because his small law project posed no perceived threat to the government, Menon claimed “she did not bother with us.”²³³

As stated, Menon returned to Delhi in 1978. But almost immediately upon his arrival, the Bar Council of India (BCI)—which still maintained a hold on the creation of legal educational centers—asked him to help “in restructuring legal education throughout the country with a view to influence professional development for better delivery of justice.”²³⁴ Although Menon had just completed a grueling four years in Pondicherry, he saw BCI’s invitation as a “rare chance to shape [the future of] education policy in India.”²³⁵ He thus agreed and by 1980 he was named as the Secretary of the organization.²³⁶ It was during his time at the BCI that Menon began developing a new full-fledged educational curriculum for Indian law students.

For instance, one of the main issues Menon focused on involved examining the length of time a law student needed to study before graduating. Recall that several of the Ford consultants and the Gajendragadkar Committee recommended students spend three years earning their LL.B. while the Law Commission of 1958 argued for only two years. Although they differed on this issue of duration, these authorities all agreed that a baccalaureate degree should be a prerequisite of admission.²³⁷ Their reasoning was that legal education was complex and that a student coming out of high school at age eighteen was not sophisticated enough to tackle the tough legal questions addressed by law faculties. Menon, however, argued that mandating a bachelor’s degree was unnecessary. In part this view stemmed from a belief that the undergraduate experience in India—as Robert Cole stated in his report²³⁸—did little to prepare future law students.

230. *Id.*

231. *Id.*

232. *Id.* Of course for the reasons stated in *supra* note 227, this claim was both chastised and viewed with great cynicism by Mrs. Gandhi’s opponents.

233. *Id.*

234. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 9.

235. *Id.*

236. *Id.* at 38.

237. See *supra* notes 46-59.

238. In his report, Cole decried the manner in which university students were educated and the manner in which they approached the issue of education itself. See Cole, *supra* note at 17-20. We have already discussed the pitfalls involved in educating students in India, but Cole also noted that his experience at Delhi University gave him the impression that many students simply did not care or want to be in college. They had poor study habits, cared little about attending classes, and frequently engaged in what he called petty cheating. Menon too, it seems, believed that given this situation, having a B.A. or B.S. before entering law school did not do much in terms of preparing students for what was to come.

Menon thus suggested that Indian legal education move from a three-year, post-baccalaureate program to a comprehensive, B.A./LL.B five-year system, where students would enter directly upon graduation from high school and matriculate from his proposed program with both degrees.²³⁹

Menon's idea was that this five-year law program would be as rigorous as any engineering or medical school curriculum, both of which had the reputation in India for being highly demanding.²⁴⁰ Moreover, he believed that a five-year program would best be able to incorporate the strengths found in American law schools together with the strengths he had seen in European Continental law schools—the latter being a model he had studied for the past several years.²⁴¹ For example, in the first two years of this five-year program, students would take a combination of doctrinal law courses and social science and humanities subjects.²⁴² They would be required to write papers throughout the term, as well as complete difficult comprehensive exams testing their analytical abilities.²⁴³ During the third and fourth years, the courses would be primarily law subjects, but students would also be asked to enroll in skills-based classes or their choice of different public interest clinics. In the fifth year, students could take electives, but regardless of their selection, there would remain a strong clinic and writing component to these final year courses. And in terms of evaluation, students would be tested regularly, rather than the old system where exams were given only at the end of the academic year.²⁴⁴

Menon completed his proposal for revamping Indian legal education in 1982. He then began to showcase this idea to various constituents, including lawyers, law professors, students, and politicians.²⁴⁵ Despite his best efforts, Menon met resistance from people in each of these groups. Even his former colleague and dean at Delhi University, P.K. Tripathi, wrote an editorial in the national newspaper, *Times of India*, deriding

239. Author interview with Menon, Feb. 29, 2004; EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 10.

240. He despised the fact that "law . . . [had become] reserved for the rejects from other disciplines and for those who wanted it cheap and with least effort." EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 15.

241. Among the most important aspect to the European model that Menon appreciated, was the fact that one could indeed enter law school upon graduation from high school.

242. Author interview with Menon, Feb. 29, 2004. See also N.R. Madhava Menon, *Reforming Legal Education: Issues, Priorities, and Proposals*, in ALL INDIA TEACHERS' ASSOCIATION; REPORT OF THE COMMITTEE ON REFORMS IN LEGAL EDUCATION IN THE 1980s, 22 (1979) [hereinafter REFORMING LEGAL EDUCATION]; N.R. Madhava Menon, *Changes in the Law Curriculum—A Proposal*, in ALL INDIA TEACHERS' ASSOCIATION; REPORT ON THE COMMITTEE ON REFORMS IN LEGAL EDUCATION IN THE 1980s, 51 (1979) [hereinafter CHANGES IN THE LAW CURRICULUM].

243. *Id.*

244. In fact, Menon proposed moving away from a full-year term system to a trimester system.

245. See EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 9; Author interview with Menon, Feb. 29, 2004.

Menon's plans as unrealistic, simplistic, and unnecessarily radical.²⁴⁶ On more than one occasion critics petitioned the Bar Council of India to sack the "relentlessly uncompromising" Menon.²⁴⁷ Frustrated that he was unable to persuade even one institution in the country to experiment with his proposal, Menon left the Bar Council in 1983 and took proverbial refuge in the United States for one year where he reunited with inspirational allies at Columbia University who sympathized with his reform efforts.²⁴⁸

TRACING THE ROOTS OF AN INDEPENDENT LAW SCHOOL

The many problems Robert Cole identified with university life in India proved to be obstacles that impeded Menon from enacting his proposals. Earlier we discussed how the Law Commission Report of 1958 criticized those institutions that, at the time, admitted graduating high school students. By the time Menon sought to implement his combined five-year, B.A./L.L.B. plan, however, legal educational institutions had stopped this practice and mainly operated in one of two ways. There was what we might call the "northern system," whereby institutions such as Delhi University, Banaras Hindu University, and Lucknow University had "law faculties" that awarded the LL.B. degree upon the completion of a three-year law program.²⁴⁹ These law faculties could also award post-graduate degrees in law, including an LL.M and/or Ph.D. Then there was the peninsular or southern system, whereby a university would serve as an umbrella, degree-granting institution with various "law colleges" attached to it.²⁵⁰ This particular system functioned much like the British university model, where in many cases these law colleges would be essentially independent, with little supervision from the university administration.²⁵¹

Menon initially hoped that his ideas would be accepted by some law programs in the north and the south. Because he had long been affiliated with Delhi University, he expected his colleagues in the north at least to give his proposal a chance. In the south, because many law colleges were much more autonomous, Menon thought he might find some faculties willing to experiment.²⁵² But he had no such luck. The university structure, even in the south, and the politics involved in trying to implement change

246. Author interview with Menon, Feb. 29, 2004.

247. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 9.

248. *Id.* at 10

249. *Id.*

250. So, for example, Bombay University had several different law colleges affiliated to it, some located a great distance from the university's administrative headquarters.

251. The reason for this split between how northern universities and southern universities operated dates back to the British period. Within the southern system, universities, in addition to law colleges, also had "law departments" which awarded LL.M. and/or Ph.D. degrees to students interested in pursuing post-LL.B. law work. See also, *supra* note 23. Note, whether it be with law faculties in the north or law colleges in the south, by the time Menon sought to make changes, a student needed a baccalaureate degree before pursuing an LL.B.

252. Author interview with Menon, Feb. 29, 2004.

in both regions were just too great to overcome. Thus "the idea of setting up an alternative independent law school"²⁵³ started to become a more attractive proposition. An independent law school would not be burdened with the constraints and bureaucracy that were inherent in the university structure, and it would allow for more potentially innovative pedagogical experimentation.²⁵⁴

But this idea for an independent legal institution did not originate from Menon; rather it had historical antecedents upon which Menon readily admitted he drew. Legal education in India, recall, was historically provincial; students tended to enroll in a law program located near to where they lived. But as early as 1964, even the Gajendragadkar Committee discussed the possibility of creating what it called a "National Law School," where the best students from all over the country would come together to study. As the Committee reported:

"[S]ome of us felt that it would perhaps be a good idea if three or four model National Law Schools are instituted in our country. . . . These National Law Schools . . . would be able to attract eminent law teachers who believe in the significance and importance of reorienting legal education in India and who would be prepared to dedicate themselves to that task. . . . [Also] these National Law Schools would enjoy more freedom of action in trying newer and newer experiments in improving legal education."²⁵⁵

Although the Committee envisioned these National Law Schools as being part of a "University community,"²⁵⁶ it believed that in order "to revolutionize legal education,"²⁵⁷ there could not be the "external hindrance or impediment[s]"²⁵⁸ typically associated with the traditional bureaucratic university structure. Creating "separate [law] institutions"²⁵⁹ then might be the best way to re-energize legal education.²⁶⁰ While no immediate developments were made on this front, about a decade later the idea of a National Law School once again reemerged. This time it was raised in an influential government-sponsored report written by a young law professor at Delhi University, Upendra Baxi.²⁶¹ Baxi, who would later go on to be India's most prominent legal academic, discussed the National Law School idea only in passing, but his report contained

253. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 10; see also *Changes in the Law Curriculum*, *supra* note 242.

254. See EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 10-11.

255. See Gajendragadkar Report, *supra* notes 92 at 33.

256. *Id.*

257. *Id.* at 34.

258. *Id.* at 34.

259. *Id.*

260. Although the Committee did point out that if the traditional law schools in fact embraced and implemented all of the reforms it suggested (see *supra* notes 94-103), then perhaps these new national law schools would not be needed. See *id.*

261. The government agency that sponsored the report was the University Grants Commission, in 1975. For a discussion of the UGC, see *supra* note 115. Baxi republished his contribution to the UGC in an article entitled: *Notes Towards a Socially Relevant Legal Education*, 5 JOURNAL OF THE BAR COUNCIL OF INDIA 23 (1976).

observations that influenced Menon in subsequent years when he promoted the independent law school model.

For example, Baxi argued that the current law curriculum largely ignored questions of "social relevance."²⁶² Law students, of course, needed to learn the black-letter law, or what he called "hard law."²⁶³ And indeed it was important, as many of the Ford consultants earlier had noted, that students take courses that focus on larger theoretical principles and that test their analytical abilities. But Baxi also believed that law curricula had to address those particular issues affecting the "Indian milieu,"²⁶⁴ such as agricultural reform, "under-privilege, exploitation [of the traditionally oppressed] and destitution."²⁶⁵

In addition, Baxi wondered whether adopting the American case method approach to teaching—as was being attempted at Delhi and Banaras Universities—was appropriate for Indian law programs.²⁶⁶ He observed a number of constraints on Indian law professors that prevented them from successfully incorporating this method into their teaching. For one thing, law teachers traditionally saw themselves as "gurus," whereby they would impart knowledge to their students through lectures. The case method approach, however, allowed students to be engaged in class and to ask questions of the professor, answers to which the guru sometimes did not know.²⁶⁷ In an environment where law teachers were already thought of as second-rate and felt enormous insecurity, it was unsurprising that they did not allow the case-method approach to run freely in the classroom. The result in many classes, Baxi noted, was a stilted, unnatural dialogue where neither the student nor the teacher left the class intellectually satisfied.²⁶⁸

The case method approach was also struggling because the case-books being used were inadequate.²⁶⁹ Furthermore, Indian legal educational institutions continued to lack library facilities with the necessary resources for students and professors to investigate in greater detail the

262. *See id.* at 31. Note at that time, most Indian law schools mandated that students take the following core courses: Indian Legal and Constitutional History; Contracts; Torts; Family Law; Criminal law and Procedure; Constitutional Law of India; Property Law; Evidence; Legal Theory; and Civil Procedure. There were then eighteen elective courses that most law schools offered, including: Administrative Law; Equity; Public International Law; Company Law; Labor Law; Taxation; International Organizations; Bankruptcy; Law of Cooperation and Public Control of Business; Military Law; Insurance Law; Trust and Other Fiduciary Obligations; Trademarks and Patents; International Economic Law; Criminology and Criminal Administration; Interpretation of Statutes and Principles of Legislation; Legal Remedies; and Private International Law.

263. *Id.* at 32.

264. *Id.*

265. *Id.* at 31-32.

266. *Id.* at 38.

267. *Id.*

268. *Id.* at 39.

269. *Id.*

problems and case-based issues discussed in class. And many teachers simply refused to relinquish the lecture oriented method as their main pedagogical tool in the classroom.²⁷⁰ For these reasons Baxi argued that: "What is sauce for the goose is not the sauce for the gander American or any other transplant simply will not do. We have to find some homespun ways of pedagogic change."²⁷¹

Baxi's observations—that law programs in India failed to train students on the "social relevance" of law and that the case-method approach had serious flaws—brought to Menon's attention issues he knew any new independent law school needed to address. But over the next few years, Menon became convinced that starting a "fresh"²⁷² institution not wedded to the traditions of a university would be best able to deal with Baxi's criticisms. The return to democracy in 1977, which brought great ferment in the Indian legal world and inspired hope that institutions—including law schools—could be fashioned to protect the rights of the powerless,²⁷³ also greatly shaped Menon. In particular, a small number of judges and lawyers during the 1980s, seeking ways to actualize the Constitution's promises of justice, embarked on a series of unprecedented and electrifying initiatives. These included relaxation of requirements of standing in court, emergence of commissions investigating human rights violations, appointment of lawyers as representatives of client groups, and a so-called "epistolary jurisdiction" in which judges took the initiative to respond proactively to grievances brought to their attention by third parties, letters, or newspaper accounts.²⁷⁴ Public interest litigation, or social action litigation, as these initiatives soon became called, sought to use judicial power to protect excluded and powerless groups (such as prisoners, migrant laborers, and the environmentally susceptible) and to secure entitlements that were going unredeemed.²⁷⁵ Menon felt that were there flexible, inno-

270. *Id.* at 39-40.

271. *Id.* at 40. Baxi then went on to discuss how specifically the Bar Council of India and the UGC could work together to improve textbooks in the country. The last section of the article then dealt with out to improve the LLM programs in Indian law schools.

272. *Id.* at 42.

273. See generally Upendra Baxi, *Taking Suffering Seriously*, in JUDGES AND THE JUDICIAL POWER (Rajeev Dhavan, R. Sudarshan, and Salman Khurshid, eds., 1985); Smithu Kothari, *Social Movements and the Redefinition of Democracy*, in INDIA BRIEFING, 1993 141-51 (Philip Oldenburg, ed., 1993) (noting that following the Emergency there was an enthusiasm among civil rights and public interest organizations that democracy could be ensured by the rule of law).

274. See generally Galanter and Krishnan, *supra* note 157. Also see, P.N. Bhagwati, *Judicial Activism and Public Interest Litigation*, 23 COLUM. J. TRANSNAT'L. LAW 561 (1985); Rajeev Dhavan, *Law as Struggle: Public Interest Law in India*, 36 JOURNAL OF THE INDIAN LAW INSTITUTE 302 (1994) [hereinafter Dhavan, *Law as Struggle*]; Carl Baar, *Social Action Litigation in India: The Operations and Limitations on the Worlds Most Active Judiciary*, 19 POLICY STUDIES JOURNAL 140, 142, 147 (1990).

275. For a recent and comprehensive account, see S.P. Sathe, *JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORMING LIMITS* (2002). The vast literature includes Baar, *supra* note 273; UPENDRA BAXI, *COURAGE, CRAFT, AND CONTENTION: THE SUPREME COURT IN THE 1980's* (1985); Bhagwati, 273 note 25; Dhavan, *Law as Struggle*, *supra* note

vative, and unencumbered law schools with socially conscious legal aid clinics, such institutions could make an important contribution to this growing public interest movement.

Therefore, there was historical precedent discussing the creation of an independent law school well before Menon began proposing this idea. To his credit, Menon recognized and carefully studied these antecedents as he put together his independent law school model. Concurrent political developments appear to have influenced his planning as well. As we shall see below, soon Menon's dream of establishing an alternative legal educational institution would come to fruition. Very few people, however, could have predicted how well such a new model eventually would fare.

CREATING A "NATIONAL LAW SCHOOL" IN BANGALORE

Menon left his position at the Bar Council in 1983 and spent the rest of the year (and part of 1984) in the United States. During his stay he traveled to various American law schools marveling at how clinical legal education had grown over the past decade. The U.S. had experienced its own burgeoning public interest movement during the 1970s, and with the financial support of the Ford Foundation, several American law schools began to institute legal aid clinics that attempted to promote public interest causes.²⁷⁶ Menon was especially excited at how students were educated in these clinics. Not only were they working closely under the mentorship of passionate teachers, but they also received the opportunity to work directly on behalf of clients—conducting legal research, drafting memos, writing briefs, and sometimes even appearing in court.²⁷⁷

273; Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?* 37 AM. J. COMP. L. 495 (1989); Clark D. Cunningham, *Public Interest Litigation in the Indian Supreme Court: A Study in the Light of American Experience*, 29 JOURNAL OF INDIAN LAW INSTITUTE 494 (1987); Marc Galanter, *New Patterns of Legal Services in India*, in LAW AND SOCIETY IN MODERN INDIA 279-295 (Rajeev Dhavan and Marc Galanter eds., 1989) [hereinafter, Galanter *New Patterns*]; Baxi, *supra* note 273; Oliver Mendelsohn, *Life and Struggle in the Stone Quarries of India: A Case-Study*, 29 JOURNAL OF COMMONWEALTH AND COMPARATIVE POLITICS 43 (1991) [hereinafter, Mendelsohn, *Life and Struggle*]; G.L. Peiris, *Public Interest Litigation in the Indian Subcontinent: Current Dimensions*, 40 INT'L & COMP. L.Q. 66 (1991) S.P. Sathe, *Judicial Activism*, 10 JOURNAL OF INDIAN SCHOOL OF POLITICAL ECONOMY 399 (1998); S.P. Sathe, *Political Activism (II): Post-Emergency Judicial Activism: Liberty and Good Governance*, 10 JOURNAL OF INDIAN SCHOOL OF POLITICAL ECONOMY 603 (1998); Susan D. Susman, *Distant Voices in the Courts of India: Transformation of Standing in Public Interest Litigation*, 13 WIS. INT'L L.J. 58 (1994) Madhava Menon, *Justice Sans Lawyers: Some Indian Experiments*, 12 INDIAN BAR REVIEW 444 (1985).

276. Ford's initiative during this time was known as its council on Legal Education for Professional Responsibility (CLEPR). Several of the country's top private and public law schools received funding from Ford to establish legal aid clinics. For an extensive discussion of how the CLEPR functioned, see the Ford website (www.fordfound.org).

277. Of course when students would appear in court, it would be under the auspices of a licensed practitioner. Moreover, in my conversations with Menon, he noted that he did not really follow an ongoing debate occurring within many U.S. law schools over whether clinical teachers ought to be tenure-track faculty members. He was mainly interested in how the

When Menon returned to India in 1984, he was reinvigorated. He supported the public interest developments that were occurring at home and wanted to build a law school that could help sustain this movement. But because of the hurdles existing within the Indian university system, Menon became convinced that the only way to accomplish his goal would be by creating an independent law school.²⁷⁸ Yet few believed that such an ambition was realistic. The Ford Foundation, because of its experience in the 1950s and 1960s as well as on the advice of a prominent American academic serving as its India-consultant at that time, opted to stay clear of any legal education initiatives.²⁷⁹ Most Indian academics and politicians also did not think Menon had the ability to make such an institution succeed.²⁸⁰ While Menon was viewed as an amicable individual, because he did not have a strong record of scholarship nor a reputation for being an intellectual star (like Baxi), there was great skepticism that he was the right person for this job.²⁸¹ Moreover, where would Menon find the money to launch and sustain such a project?

Menon though remained undeterred; for one year he lobbied various constituencies (including many of his critics) for moral, political, and financial support. In 1985, the Bar Council of India decided to back Menon's plan to set up an independent law school.²⁸² The Council promised to donate close to one hundred seventy thousand dollars, and it negotiated with the southern state of Karnataka to match this donation in return for the new law school making its home in Karnataka's capital of Bangalore.²⁸³ As the money and groundbreaking started to become a

students were being taught and did not become involved in what he considered to be mainly an issue for the American law schools to handle.

278. See EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 10-11.

279. Author interview with Dr. Carolyn Elliott, Former Program Officer, Ford Foundation official working in India during this time, April 1, 2004. The American academic was Professor Marc Galanter. Galanter provided the author with a memo he wrote to Ford indicating his great skepticism that Menon's idea could succeed. (Memo on file with author.) Note, Elliott stressed that even if Galanter had not been wary, Ford still would likely not have supported Menon. Ford, by this time, had moved to supporting more civil society efforts, rather than governmental institutional legal projects, as it had done during the period before the Emergency. There was a "sea-change" at Ford, according to Elliott, where the feeling was among Ford policy-makers that the best way to enact socio-economic and political change lay at the grassroots level.

280. Author interview with Menon, Feb. 29, 2004.

281. *Id.*

282. See EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 11. One question that is often asked is why the Council supported Menon. For one thing, the Council too had become disillusioned with the quality of law graduates over the past several years. In addition, the Council had a relationship with Menon; recall Menon had worked with the Council from 1978-83. The Council respected and trusted Menon's judgment and believed, like he did, that legal education in India need to be revamped. And, the Council also supported the new public interest litigation initiatives that were growing in India. It viewed having a law school that could train students on the techniques and values of public interest litigation as crucial to this movement's success.

283. Author interview with Menon, Feb. 29, 2004. Note, although the Bar Council originally promised this amount, Menon noted that ultimately it only gave about \$70,000.

reality, a new problem arose. In 1986 some politicians and prominent judges in Kamataka questioned whether Menon should necessarily serve as the new law school's director. Several people started to advocate for Upendra Baxi; after all, the argument went, if this was to be India's pre-eminent law school, why not have the country's top legal scholar serve as its leader?²⁸⁴

But Baxi was conflicted about being considered. Two years earlier, the American company, Union Carbide, had a terrible gas leak at its plant in Bhopal, Madhya Pradesh.²⁸⁵ Thousands of people were killed and injured,²⁸⁶ and Baxi was serving as one of the leading advocates working on behalf of the victims.²⁸⁷ Baxi had grown increasingly disgusted with the Indian government's desire to settle this matter in what he thought was a hasty fashion. The Supreme Court's Chief Justice also publicly seemed to support the government's efforts.²⁸⁸ The Chief Justice's

284. *Id.*: Author interview with Upendra Baxi, March 20, 2004. (Note, Baxi was too modest to characterize his candidacy in the way that I but it is accepted that this was the rationale of those who supported him.)

285. Much has been written about the Bhopal tragedy. For a selected set of readings, see KIM FORTUN, *ADVOCACY AFTER BHOPAL: ENVIRONMENTALISM, DISASTER, NEW GLOBAL ORDERS* (2001); DOMINIQUE LAPIERRE AND JAVIER MORO, *FIVE PAST MIDNIGHT IN BHOPAL* (2001); JAMIE CASSELS, *UNCERTAIN PROMISE OF LAW: UNCERTAIN PROMISES OF LAW* (1994). Also for an on-line set of resources, http://www.questia.com/popularSearches/bhopal_disaster.jsp.

286. Obtaining a precise figure on how many people were killed has been difficult. Some estimate that between 2,000 and 8,000 people were killed in the days immediately after the leak, with 14,000 dying later as a result of related illnesses. I was just in Bhopal during March 2004 to commemorate the twentieth anniversary of the leak, and estimates were that a total of 20,000 people have died since 1984. See *id.*

287. Author interview with Baxi, March 20, 2004.

288. In fact, the Chief Justice remarked shortly after the accident that given India's overcrowded, overburdened courts, the victims would be lucky to receive any compensation at all. The politics of the Bhopal disaster are quite complicated. The accident took place on December 4, 1984. Indeed because of the terribly high number of cases backlogging the Indian court system (and the possibility of getting greater monetary damages in the U.S.,) the Indian government pushed to have the case against Union Carbide tried in the U.S. (The government of India in 1985 passed the Bhopal Act, which allowed it to represent the victims of the Bhopal disaster in the American courts.) The Indian government then came to the U.S. and hired what is today the law firm of Robbins, Kaplan, Miller, and Ciresi in Minneapolis to represent its interests. (Robbins had made its name in plaintiff's litigation with its lawsuit over the Dalcon Shield birth control devices.) The case was heard in the Southern District of New York Federal Court. Union Carbide in 1985 moved to have the case dismissed on grounds of forum non conveniens. In 1986, the New York federal court granted this motion and transferred the case back to India. The case was then assigned to a district court in Bhopal, Madhya Pradesh where in 1988 an Indian judge granted interim financial relief to the victims. This decision was appealed to the Madhya Pradesh High Court, where although overruling the lower court's decision, curiously cited a British statute in granting its own interim relief to the victims. The case then was appealed to the Indian Supreme Court, which took the unusual step in February 1989 of structuring a settlement between the government of India and Union Carbide whereby the latter was to pay out \$470 million dollars in damages to the victims—a wholly inadequate sum according to representatives of the victims. We are approaching the twentieth anniversary of the Bhopal disaster, and sadly, most of the victims still have not received compensation for their injuries, due to governmental inefficiency and corruption. See *supra* note 285.

position was especially troubling for Baxi, because if he took the job as director, he would be working under the auspices of the Chief Justice, as the new law school was to be structured in a way whereby the Chief Justice would serve as the institution's ultimate head.²⁸⁹ In addition, Baxi worried that with the Bar Council of India and politicians joining together to create this new law school, the institution would have difficulty retaining true independence.²⁹⁰ And relatedly, the new director was also expected to raise money on behalf of the law school; foreign funders were seen as one important source to tap. But given his long-held views that educational reformers in India needed to look inward rather than westward, Baxi bristled at the thought of soliciting money from institutions such as Ford, the World Bank, and the like.²⁹¹

Baxi ultimately withdrew his name from consideration in 1986. The Bar Council, the Chief Justice, and the Karnataka state government then turned to Menon, who himself now had some reservations about serving as director. As Menon recalled: "I was asked to raise the resources, assemble the faculty, develop a campus with necessary infrastructure, organize appropriate course of studies and mobilize a student body to establish what they called the 'Harvard of the East'—in as short a time as possible!"²⁹² Many friends and foes alike simply did not believe he was up to the task; "they laughed contemptuously and advised me against my such adventure."²⁹³ But after great reflection, and with the support of his family, Menon decided to accept the offer, and on September 1, 1986 he became the first director of what would be called the "National Law School of India."²⁹⁴

Statutorily, the state of Karnataka established the National Law School (NLS) in 1986, with the first class entering that following year.²⁹⁵ In the months leading up to the opening of the law school, Menon faced several serious challenges. He had to hire a faculty and administration, establish a library, raise money, implement a curriculum, and review

289. Author interview with Baxi, March 20, 2004; Author interview with Menon, Feb. 29, 2004. The new law school, remember, was a creation of the state of Karnataka and the Bar Council of India. Both bodies believed that making the Chief Justice of India the *de jure* head, or Chairperson, of the institution would give a great deal of legitimacy to the institution.

290. Author interview with Baxi, March 20, 2004.

291. *Id.*

292. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 11.

293. *Id.*

294. Point of fact, the official name of the law school was entitled: National Law School of India University. The word "University" was added to the title, because the statutory "draftsmen of the Karnataka Government felt the word University" must necessarily appear in the name." See *id.* at 13. Although no explanation for why this was so is given, it appears that the historic notion of the role that universities have played in educational life in India prompted this addition. Moreover, perhaps there was a sense that obtaining funding from the U.G.C. might be easier if the law school was labeled a "University" rather than just a law school.

295. See NATIONAL LAW SCHOOL OF INDIA UNIVERSITY: PROSPECTUS 2004-2005 at 4. The act was known as the National Law School of India Act, Karnataka Act 22 of 1986.

student applications—not to mention find buildings to house classrooms and dormitories.²⁹⁶ The Karnataka government eventually provided a “few dilapidated structures”²⁹⁷ in the capital city of Bangalore, but Menon knew that if this experiment were to succeed, the law school needed much better facilities.

Nevertheless, Menon spent late 1986 and early 1987 at this site focusing on recruiting top academics to his law school. Eschewing the traditional practice of mainly looking regionally for teachers, Menon conducted an international search.²⁹⁸ He wanted academics with vision: teachers who had thought seriously about pedagogy and scholars with a passion to write.²⁹⁹ He required those he hired also to have a deep commitment to clinics and legal aid. After months of reviewing applications, Menon brought in one hundred fifty-five people for a three-day interview camp.” Menon grilled each applicant individually and in small groups on whether they had the fortitude to help him with his plans to revamp Indian legal education. To this day there remain stories of how rigorous this three-day session was.³⁰⁰

At the end of the process only eight applicants received offers, with each one accepting.³⁰¹ The new independent NLS, now with its nine faculty members (including Menon), had the task of devising a curriculum. To be sure, Menon did not want to emulate what he considered as the deficient curricula of other Indian law schools. At the same time, taking the advice of the Ford consultants and Upendra Baxi, he did not want simply to mimic foreign models.³⁰² Although Menon believed in incorporating the many positive lessons he learned from his visits to American law schools, he recognized that for his plan to sell it required an Indian character.³⁰³

For six months, Menon and his colleagues labored over the composition of the curriculum.³⁰⁴ Finally, in mid-1987 a model curriculum was completed. (The curriculum today, which is a later incarnation of the ’87 model, is listed in the appendix.) For almost twenty years, Menon had

296. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 14.

297. *Id.*

298. *Id.* at 12. Dating back to his first years with the Bar Council of India, Menon believed that law schools had been too myopic in who they had hired. *See Reforming Legal Education*, *supra* note 242.

299. See both sources, *Id.*

300. While conducting research for this article, I met faculty who told me that Menon would spend several hours each of the three days examining and probing into: why the applicants wanted to teach; what their research agenda was; how scholarship informed pedagogy; what their ideas were for clinics; and so on. The applicants then had to give mock lectures, provide writing samples, and explain how they would contribute to overhauling the legal educational process. As stated above, never before had such a rigorous interview process been associated with law school-teacher hiring.

301. See EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 12.

302. See *id.* at 16; Author interview with Menon, Feb. 29, 2004.

303. *Id.*

304. *Id.*

theorized about how a solid curriculum for Indian students might look. But the completion of the 1987 model for the NLS was arguably Menon's greatest accomplishment to that point. Not only were courses listed, but the curriculum outlined: how these subjects were to be taught; the expectations of both students and faculty; and the objectives for each and every class.³⁰⁵

For example, law at the NLS would be a joint, five-year B.A., LL.B. program, each year being divided into three trimesters and with students required to take no fewer than sixty courses in order to graduate.³⁰⁶ (The number of courses was proportionately far greater than the number offered at traditional three-year law schools.) Also, no teacher would employ the pure lecture method. In every course, teachers would encourage student participation and emphasize writing, researching, and analysis. Furthermore, subjects would be taught in an interdisciplinary manner—with a particular focus on how social science and empirical research intersected with law.³⁰⁷ To promote the idea of serving the needy, all students would be required to take a series of clinical and legal aid courses.³⁰⁸ And students would be evaluated throughout the academic year; examinations would be problem-based, and unlike how other Indian law schools operated, students would receive back their tests with comments and could work with professors to improve their test-taking ability.³⁰⁹

In addition, Menon institutionalized into the curriculum a mandatory two-month internship that students would need to complete every year during their holiday period. In India, most lawyers are solo practitioners who work as courtroom litigators.³¹⁰ For decades the custom was that after completing law school, a law graduate interested in practicing usually would take up an apprenticeship with an experienced lawyer who was working in one of three arenas: a lower level district court; a state High Court; or the Supreme Court of India.³¹¹ Where that law graduate started would depend on several factors, including law school performance, geographic location, personal ambition, connections," and the like.³¹² But Menon's view was that if his law graduates could prove to hiring practitioners that they already had serious apprenticeship experience, then placement rates and placement opportunities would likely be enhanced.³¹³

305. Author interview with Menon, Feb. 29, 2004; EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 16-18.

306. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 17.

307. *Id.* 18.

308. *Id.*

309. *Id.* at 17-18.

310. For a discussion of the Indian legal profession, see Galanter and Krishnan, *Bread for the Poor*, *supra* note 157. Also see, Jayanth K. Krishnan, *Transgressive Cause Lawyering in the Developing World: The Case of India*, in CAUSE LAYERING VOLUME 3 (eds., Stuart Scheingold and Austin Sarat, forthcoming 2005).

311. *Id.*

312. *Id.* And it was common that the court where the law graduate apprentices will be the court in which she practices as a lawyer until she retires.

313. Author interview with Menon, Feb. 29, 2004.

Of course, finding lawyers to mentor law students might be a challenge; however Menon figured that since these interns would not be paid (instead receiving academic credit), their "free" labor would be attractive to enough practitioners.

And perhaps the most fundamental change Menon sought to make involved how students would be admitted. Recall that the Ford consultants bemoaned the poor qualifications of the students they observed. Over the past three decades, various Indian governmental commissions and academics, including both Baxi and Menon, also had raised concerns over poor student quality. Recognizing that for the NLS to gain public legitimacy students had to be "top-notch,"³¹⁴ Menon instituted a standardized admissions exam, based on the American Law School Admissions Test, as well as requiring a written essay application and interview. Only those students who performed well in each part of the admissions process would be selected; also, the common practice of families bribing or using personal influence to have their children admitted would not be tolerated.³¹⁵ Moreover, because Menon capped each class at forty, he banked on only the best and brightest being selected.³¹⁶

All of Menon's work over the years attempting to reform Indian legal education finally seemed to have come to fruition. But would students apply? Was there a demand for this new approach to educating law students? In the months before the 1987 October semester was to begin, Menon lobbied various constituencies to sell his NLS program. He sought support from the Bar Council of India, the Supreme Court, other prominent judges and politicians, and public interest non-governmental organizations.³¹⁷ He explained to each of these groups the NLS' mission—how while it drew upon much of the U.S. law school model to educate students, it was fundamentally an Indian institution that sought to bring social justice for everyday Indians.³¹⁸ Through force of personality he eventually was able to convince these different interests to endorse publicly his endeavor.³¹⁹ Menon also successfully lobbied lawyers both in India and in the U.S. to donate whatever resources they could for his nascent law library. He worked with a team of architects as well to design his dream campus that he hoped to build within the next five years. Finally, he went to the print and television media to promote his reforms

314. Author interview with Menon, Feb. 29, 2004.

315. *Id.* Note, this practice in India was and continues to remain one that pervades many educational institutions. For a discussion how corruption in this sense and in other ways is commonplace in India, see *See Krishnan, supra* note 157.

316. Author interview with Menon Feb. 29, 2004.

317. *Id.* EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 19.

318. *Id.*

319. The term that is used is that the Chief Justice would be the NLS' "Visitor of the University." Although this would be mainly a formality, because of the authority delegated to the law school's director, the Chief Justice still would be given the statutory power to oversee the institution.

and showcase his vision to the broader public.³²⁰

Through all his hard work, Menon and the NLS eventually received "over eighty"³²¹ applications. Forty students were selected in this "first batch,"³²² however Menon worried that just because they were chosen did not mean they would come. To his and his staff's delight, each student accepted and arrived with great anticipation in October of 1987. (There was an even split between men and women in the entering class, with nine of the forty seats reserved for lower castes.³²³) This first-year group was everything that Menon wished. They took to the new curriculum with great passion, and the teachers were as dedicated a faculty as Menon had ever seen. "It was simply amazing,"³²⁴ Menon remarked. Students craved and received intellectual challenge within the classroom and on their own would often sponsor academic debates and colloquiums. Teachers likewise helped nurture this enthusiasm; in fact with the advice and guidance of their faculty advisors, a select group of students qualified for the Jessup International Moot Court competition in the United States.³²⁵ By the second trimester, NGOs and officials from governmental agencies, who had visited the campus to observe the faculty, began hiring various teachers as outside consultants, because of how impressed they were with the quality of these educators. And by the end of the third trimester—as the buzz surrounding the NLS grew—the faculty had little difficulty helping each of the forty students find a two-month internship with a practicing lawyer.³²⁶

But even with the success of this first year, Menon also saw that students and their families were disheartened over the facilities that housed the NLS. Menon thus lobbied Indian NGO's, public agencies, and foreign donors to help fund the construction of his three million dollar architecturally designed law school. His perseverance once again paid off. He received financial commitments from private industries and organizations, but the biggest donations came from the central government's University

320. *Id.* EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 20. Note, the print media was the All India Reporter, and the television network was the state of India's Doordarshan channel. Both outlets provided Menon with their services for free.

321. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 20.

322. Author interview with Menon, Feb. 29, 2004. The term "batch" is what Indians typically refer to as "class."

323. Within the Indian constitution, Article 14 (2) allows for the Indian government to set quotas in governmental jobs and in educational institutions for those caste groups that have historically been discriminated against within Indian society. There is an important literature discussing the relevant case law and legalities surrounding this issue. See e.g., SATHE, *supra* note 33; OLIVER MENDELSON AND MARIKA VICZANY, THE UNTOUCHABLES: SUBORDINATION, POVERTY AND THE STATE OF MODERN INDIA (1998) MARC GALANTER, COMPETING EQUALITIES (1984); Clark D. Cunningham and N.R. Madhava Menon, *Race, Class, Caste. . .? Rethinking Affirmative Action*, 97 MICH. L. REV. 1296 (1999); Clark D. Cunningham, *Lessons on Affirmative Action from India*, 1 THE SUBCONTINENTAL: A JOURNAL OF SOUTH ASIA AMERICAN POLITICAL IDENTITY 51 (Summer 2003).

324. Author interview with Menon, Feb. 29, 2004.

325. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 21.

326. Author interview with Menon, February 29, 2004.

Grants Commission (which contributed four hundred thousand dollars), and to many people's surprise, the Ford Foundation.³²⁷ Recall that after the 1971 Cole report and then Indira Gandhi's suspension of democracy, Ford decided to shift its focus from institution building and legal education to more grassroots initiatives.³²⁸ In the late 1970s and through the 1980s, Ford began funding various "bottom-up"³²⁹ programs, including organizations that sought to provide legal aid to the needy. However, Menon was able to convince Ford that a natural extension of its new priorities would be to support the NLS. The NLS and Ford had similar goals, Menon lobbied, but the law school could not realize its vision working out of the facilities within which it currently operated. Persuaded by his pitch, Ford donated eight hundred thousand dollars to NLS, to help it move from its inner city dwellings to an eighteen acre campus in the village-town of Nagarbhavi, right outside Bangalore.³³⁰

By 1990—just three years after its opening—the NLS relocated to its new campus.³³¹ From the donations Menon collected, he could finally hire a regular full-time staff. (Up until then, faculty members were doing much of their own administrative and secretarial work.) In terms of aesthetics, the Nagarbhavi grounds highlighted Bangalore's reputation for being the "garden city," as the greenery and flowers surrounding the new buildings, library, and dormitories were spectacular.³³² NLS prestige also grew rapidly. Several NLS students won fellowships to do post-LL.B. studies in England, Australia, and the United States. (Two students even received Rhodes scholarships.) The President of India and other national dignitaries spoke at the law school's five-year anniversary.³³³ Law professors from all over the world, including the United States, spent time as visiting scholars at the NLS.³³⁴ And the International Bar Association funded a continuing legal education professorial chair, while the United Nations sponsored a refugee law chair.³³⁵

By the mid-1990s, three thousand graduating high school students

327. *Id.*; EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 22.

328. Author interview with former Ford-Delhi official, Dr. Carolyn Elliott, April 1, 2004.

329. *Id.*

330. *See id.* Also, the money Ford donated also went towards funding a new library and other academic programs that focused on providing legal aid to the needy. *See EXCELLENCE IN HIGHER EDUCATION, supra* note 191 at 22.

331. I actually visited this campus in 1991, while doing research for an undergraduate senior honors thesis, as a student at Ohio State University. I have visited the law school since then, several times—most recently during March of 2004.

332. *Id.*

333. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 23.

334. Included among these American scholars were Professors Marc Galanter, Clark Cunningham, Ken Gallant, and Frank Bloch. These professors were invited to the NLS both to teach courses (including clinical courses, with which Cunningham, Bloch, and Gallant were especially familiar) as well as serve as active members within the law school's community. Author interview with Menon, Feb. 29, 2004.

335. EXCELLENCE IN HIGHER EDUCATION, *supra* note 191 at 24.

were applying for entrance to NLS.³³⁶ Because of the popularity and respect for the law school, Menon decided to up the entering class size from forty to eighty. Correspondingly, he hired more faculty members to maintain a low student-to-teacher ratio. The NLS was thriving, and throughout this period Menon was hailed as the driving force behind the law school's success. The NLS was the culmination of decades of planning and research on how to make Indian legal education an intellectually worthy enterprise. Many people did not believe that the NLS could have made it without Menon, and the worry started to set in as to what would happen once he retired, which by law he had to do upon turning sixty-two in 1998.

CONCLUSION

As the twentieth century came to a close, the NLS had solidified its reputation as the leading law school in India. In only about a decade, Menon had realized his dream—to construct an Indian law school that would emphasize pedagogy, analytical rigor, clinical training, and public service. In 1996, Menon asked an independent three-member panel comprised of one law professor from the U.S., one from England, and one from Sri Lanka to perform an evaluation of the NLS.³³⁷ These foreign academics were scholars in international and comparative law and were well familiar with the Indian legal system and Indian legal education. As the authors of the report conceded, they were astounded by the NLS' accomplishments, greatly praising what it had accomplished in so little time.³³⁸

In part Menon was successful because he drew on what he considered to be the best aspects of American legal education; but he did not believe in the wholesale importation of the U.S. model. Another part of his planning relied on examining the reports of past Indian law commissions and the proposals from fellow academics in order to create an institution that could meet the legal needs of Indian students, Indian professors, and the Indian public. Menon thus proved what the early American consultants stated to the Ford Foundation: that Indians could indeed come up with their own innovative ideas to reform legal education.

In 1998, Menon turned sixty-two years old. Under the law passed by the Karnataka state government creating the NLS, this was the mandatory

336. Author interview with Menon, Feb. 29, 2004.

337. See MARC GALANTER, SAVITRI GOONESEKERE, AND WILLIAM TWINING, REPORT OF THE EXPERT PANEL ON THE NATIONAL LAW SCHOOL OF INDIA 1996 (report on file with author).

338. See *id.* at 36-37 (noting that the NLS serves as a "pace-setter" and that "so successful has it been that it has stimulated expectations and demands that could not possibly be met by a single institution.") But the panel also made some recommendations as well. If the NLS were to continue to be the standard-bearer, it needed to, among other things, pay its faculty higher salaries in order to retain and recruit the very best in teaching. It also needed to improve its library and staff-size. Then there were other, more general suggestions, including clarifying its aspirations for the next five to seven years and fine-tuning the curriculum to ensure that Menon's goal of wanting to make the law school experience as interdisciplinary as possible would succeed.

retirement age for sitting directors.³³⁹ Some members of the faculty and student body started to circulate a petition to ask the legislative assembly to amend the act to extend the retirement age. However, Menon declared that he did not wish to continue serving; he was ready to step down, and he was doing it on his terms. He and his wife also wanted to return to their home state of Kerala, where much of their extended family remained.³⁴⁰

In spite of the huge strides made by the NLS in just eleven years, there were issues that concerned Menon as he departed. A main goal for Menon in starting an independent law school was to ensure that students could use their skills to deliver legal services to the needy. But after 1991, new possibilities—never before offered—presented themselves to Menon's graduates. During this time, the Indian government opened its markets to foreign investors.³⁴¹ Soon, private multinational companies from the U.S., Europe, and other places came to India.³⁴² India had officially entered the globalizing economy.³⁴³ Many of these foreign companies, not surprisingly, sought to lure intellectually attractive graduates to their businesses. These companies' salaries were exponentially higher than what Indian practitioners could provide, and with tuition going up over ten times by 1990 (to cover costs and pay for the school's expansion),³⁴⁴ for most NLS graduates it was only financially logical to pursue these exciting (and lucrative) private sector opportunities.³⁴⁵

But the graduates' shift away from public interest law made some observers question the NLS' commitment to its original mission. Also, that the socio-economic status of the student body was increasingly becoming upper middle class or wealthier—as they were the only groups who could afford the rising tuition costs—drew criticism from some who accused the NLS of ignoring the applications of students who came from populations that the law school purportedly wanted to help.³⁴⁶ In addition, while the professors at the school certainly focused on the importance of pedagogy, scholarly output remained low. With library facilities and other research resources continuing to be below par, it is understandable that professors would find it difficult to engage in serious scholarship. Plus,

339. See National Law School of India Act, Karnataka Act of 1986.

340. Author interview with Menon, Feb. 29, 2004.

341. The literature in this area is vast. For a selected set of readings, see: BIMAL JALAN, *THE INDIAN ECONOMY* (1993); BIMAL JALAN, *INDIA'S ECONOMIC POLICY: PREPARING FOR THE TWENTY-FIRST CENTURY* (1996); JAGDISH BHAGWATI, *INDIA IN TRANSITION: FREEING THE ECONOMY* (1993). For an important resource listing other sources in this area, see <http://www.lib.virginia.edu/area-studies/SouthAsia/Lib/man05eco97.html>.

342. *Id.*

343. *Id.*

344. Tuition in 1990 was raised to twenty-five thousand rupees; one year prior it was twenty-five hundred rupees. Today, the annual cost of attending the NLS is one hundred thousand rupees—which is roughly the medium income for a family of four for one full year.

345. Author interview with Menon, Feb. 29, 2004.

346. Similar to the type of preparatory courses for the American LSAT, so too have such prep seminars started for the NLS entrance exam. Of course, only those who have the monetary resources to afford such benefits have enrolled.

because hiring quality faculty remained a challenge, present faculty members began taking on more diverse courses, often outside of their areas of interest in order to meet student demand; inevitably this decreased the time professors could devote to writing. Yet, a perception started to develop among students and other outside observers that many of these (unprolific) faculty members were not doing their fair share to maintain the NLS' reputation as an intellectually rich institution.³⁴⁷

Menon retired in 1998, but these issues have continued to challenge the NLS. His successor was an internal candidate from within the faculty, Dr. N.L. Mitra. Mitra served barely two years before succumbing to the mandatory retirement requirement.³⁴⁸ Thereafter, Upendra Baxi was once again nominated for the directorship. Eventually, Baxi's name was dropped, in part because even some of his supporters conceded that he was approaching sixty-two years of age.³⁴⁹ In 2000, Dr. Mohan Gopal was named as Director. Gopal was a student of Menon's at Delhi University, and Menon publicly supported him for the directorship. Gopal, who received his S.J.D. from Harvard Law School, was a high-ranking, senior lawyer for the World Bank as well as an adjunct professor at Georgetown University. Prior to his tenure at the Bank, he had served as a law professor at the National University of Singapore. Certain NLS faculty members, however, were skeptical that because Gopal worked for the Bank—an institution that they viewed as a neo-colonialist body—that he could serve effectively as a director.³⁵⁰

As it turned out, Gopal, upon assuming the director's position, argued for positions that surprised various faculty and student constituencies. In speeches and in writings, Gopal called on the NLS to begin looking inward and to cease relying on Western educational paradigms as the basis for Indian legal education.³⁵¹ As globalization continued, it was incumbent upon the NLS, Gopal contended, to find a way of adjusting to the new

347. In my research for this project, academics and lawyers, not affiliated with NLS, as well as some former NLS students reported their disillusionment with how few eminent scholars were on the law school's faculty.

348. I spoke with officials who stated that Mitra wanted to continue serving as director and in fact suggested approaching the state legislature to extend the retirement age to sixty-five. However, because of internal faculty opposition, his idea was not supported. Eventually Mitra went on to the state of Rajasthan where he currently serves as director of an NLS progeny, a five-year law school in the city of Jodhpur.

349. See RAM JETHMALANI, *BIG EGOS, SMALL MEN* (2000).

350. Author interview with faculty members at the NLS, March 3-4, 2004 (identities protected upon request.) Author interview with six separate law graduates from the NLS, who were practicing in New Delhi, March 5, 2004. The World Bank in India is seen by various constituents as the classic rich Western institution that uses money as the proverbial carrot, in an effort to force the Indian government to adopt to what are perceived as incompatible Western social, political, and economic policies.

351. *Id.* The author interviewed Gopal on two separate occasions, once on Feb. 29, 2004 and once on March 1, 2004. These sessions took place in Bhopal, India, where Gopal and the author were attending a conference being sponsored by Menon, where he (Menon) is the director now of the National Judicial Academy, a national training center for Indian judges.

changes while retaining its own sense of Indian identity.³⁵² Yet for personal, family reasons Gopal voluntarily resigned in early 2003. Since then, Dr. A. Jayagovind has presided as director. He, like Mitra, was an internal candidate and has thus far proved to be a non-controversial leader who has tried to continue implementing the goals first articulated by Menon.³⁵³

As for Menon, he moved back to Kerala where he planned on living out a quiet life with his wife. However, less than a year later, the Chief Minister of the state of West Bengal,³⁵⁴ Mr. Jyoti Basu, asked Menon to serve as the director of a new five-year law school modeled after the NLS, starting in his state's capital city of Calcutta. In 1997 the state of Madhya Pradesh had opened a five-year law school also based on the NLS model in its capital, Bhopal.³⁵⁵ Then in 1998, the state of Andhra Pradesh followed suit by creating the National Academy of Legal Studies and Research (NALSAR), located outside its capital city of Hyderabad.³⁵⁶ And in 1999, Dr. N.L. Mitra, the director who succeeded Menon, left Bangalore to head-up an NLS prototype in the northern city of Jodhpur.³⁵⁷ West Bengal had a reputation for being one of India's leading intellectual hubs,³⁵⁸ and Jyoti Basu wanted an NLS-type law school in the capital to further enhance his state's prestige.

Even during his retirement, Menon was continually pondering how to improve Indian legal education.³⁵⁹ With India becoming a bigger player in the globalizing economy, students and lawyers interested in issues of technology, trade, and international markets realized that they needed to

352. See NEW VISION FOR LEGAL EDUCATION IN THE EMERGING GLOBAL SCENARIO, Sept. 2001 (study chaired by Dr. Mohan Gopal. This study provided a detailed outline of Gopal's vision for reforming legal education.)

353. Author interview with Dr. Jayagovind, March 4, 2004. The director told the author that he is, in particular, very interested in completing the construction of a new library and research center, which should be done by the fall of 2004. He also is keen on making all the classrooms high-tech and providing every student with a laptop computer. Making NLS a first rate, in terms of computerization and technology, are especially of significance to Jayagovind.

354. The Chief Minister is the equivalent to what a U.S. state governor would be. The Chief Minister is the top elected political official in a state in India.

355. This institution was known as the National Law Institute University, and it was created by the state legislature through the passage of the National Law Institute University Act No. 41 of 1997.

356. NALSAR was created by the passage of the Andhra Pradesh Act 34 of 1998. The state of Andhra Pradesh, and its Chief Minister, Chandrababu Naidu, have been highly supportive of NALSAR. I spent several months—on and off—in 2003 at this campus and observed how its faculty and staff were passionately committed to becoming the top law school in India. The facilities are first-rate, surpassing the NLS campus, and its students are considered as good, if not better than the students at Bangalore.

357. Jodhpur is located in the state of Rajasthan.

358. India's recent Nobel Prize winner in economics, Dr. Amartya Sen is from West Bengal. And the country's most famous poet, Rabindranathan Tagore was also from this state. In addition, the Calcutta High Court, dating back to the time of the British, has been viewed as one of the leading state courts in the country.

359. Author interview with Menon, February 29, 2004.

have a firmer footing in intellectual property law. Menon too saw this trend developing and believed that law schools had to teach their students how the hard sciences intersected with law.³⁶⁰ He thus accepted the Calcutta position, on the condition that the law school would embrace the NLS model, with the variation that hard sciences—rather than social sciences—would be taught in conjunction with law classes.³⁶¹ Menon also agreed to stay in Calcutta only as long as it took to shore-up this program. By 2003, with the curriculum and reputation of the *National University of Juridical Sciences* now firmly in place, Menon stepped down as director. (Menon's work in Calcutta, in fact, helped spawn another law school in Raipur, the capital of the state of Chattisgarh, in 2003. This latest institution has sought to incorporate both hard sciences and social sciences as integral features of its curriculum.³⁶²)

In 2003, the Chief Justice of the Indian Supreme Court asked Menon to serve as the director of a new institution in Bhopal dedicated to the training of judges who were beginning their careers on the bench. Rather than returning to Kerala, which most observers believed he would do, Menon, after much thought and consultation with his wife, accepted the new position and new challenge. No such institution existed in India; the belief held by the Court and those in Parliament who pushed for creating this National Judicial Academy (NJA) was that were Indian judges better educated on how to deliver justice in a more timely and efficient manner, the gridlock that currently plagues the court system might be alleviated.³⁶³ Elsewhere, scholars have written on how the backlogs in the Indian courts—considered to be the worst in the world—have essentially rendered the judicial process useless for tens of millions of Indians.³⁶⁴ Believing that Menon's skills and vision to transform the education of law students could be used now for helping judges, backers of the NJA turned to him for leadership. (Menon and his wife moved to Bhopal in late 2003, where they currently reside on the campus of the NJA.³⁶⁵ Although optimistic, Menon notes that only in time will

360. *Id.*

361. *Id.*

362. Its official name is Hidayatullah National Law University, Raipur.

363. See National Judicial Academy website, <http://www.nja.nic.in/>.

364. See Krishnan, *supra* note 157; See also Jayanth K. Krishnan, *The Rights of the New Untouchables: A Constitutional Analysis of HIV Jurisprudence in India*, 25 HUM. RTS. Q. 791 (2003); Galanter & Krishnan, *supra* note 157. Also economist Bibek Debroy, has noted: "Half a million cases in the High Courts have been on hold for 10 years or more, and almost 1 million in the lower courts. While the overly long time taken for civil cases to be resolved can be frustrating to litigants, of much greater concern are cases that involve incarceration. Two-thirds of the case backlog involves criminal trials. Today, there are 275,000 people in India's jails; 200,000 of them are waiting for their day in court. Even more distressing, 72% of the jail population consists of people accused only of petty crimes. Many have been locked up awaiting trial for longer than the maximum sentence for their alleged crime." Bibek Debroy, *Losing a World Record*, FAR E. ECON., Feb. 14, 2002, at 23.

365. In 2004, Menon invited me to Bhopal to give a presentation on the type of education judges in the United States receive. He sought to inquire whether there might be any useful lessons the NJA could take from the American system. My talk, given on March 2, 2004,

we be able to evaluate whether the NJA is a successful institution.)

In sum, this article has sought to trace the historical development of legal education in post-colonial India. By gaining access to nearly one thousand pages of previously confidential documents, I have described how between the 1950s and the early 1970s the Ford Foundation attempted to export its vision of legal education to India. As its many American consultants who traveled to India reported back to Ford, however, this experiment could not succeed for various institutional, political, cultural, and legal reasons. But the biggest obstacle, as the Americans noted, was that any real (and publicly accepted) improvement in Indian legal education had to come from Indians, not outsiders. Although Indians had worked on this issue for decades, only after Ford abandoned its work in this area did substantive reforms—championed by N.R. Madhava Menon in particular—occur. As we have seen, Menon's reforms incorporated several of the suggestions made by the American consultants, but his plans also had a distinctively Indian character. Today, not including the independent institutions he established or helped to inspire in Bangalore, Bhopal, Hyderabad, Jodhpur, Calcutta, and Raipur, there are approximately four-hundred sixty other law schools in India.³⁶⁶ That already one-third of these institutions have converted to Menon's five year model³⁶⁷ just reaffirms the point made by Ford's American consultants: that Indians indeed have the skills to improve the quality of legal education in their country.

APPENDIX

The Current Curriculum at the National Law School (2004-2005)

There are three trimesters lasting between July-September; October-January; and March-July.

First Trimester: Sociology I; Economics I; Legal Methods, Materials & Processes; Torts I; English and Legal Language

Second Trimester: Economics II; Political Science I; History I; Contracts I; English & Legal Language (Continued)

Third Trimester Sociology II; Contracts II; Constitutional Law I; Torts II; English and Legal Language (Continued)

Fourth Trimester: History II; Political Science II; Constitutional Law II; Family Law I

focused mainly on how judges are trained at the National Judicial Center in Reno, Nevada, as well as how state judges are trained at the National Center for State Courts in Williamsburg, Virginia. I also spoke about how various law schools and non-governmental organizations have sponsored judicial training programs (Lecture on file with author).

366. Information obtained from interview author conducted with Menon, February 29, 2004. Although according to Professor Marc Galanter, who is conducting a study on behalf of the Asia Development Bank, there currently are 544 law schools in India. (Unpublished report on file with author.)

367. *Id.*

368. See NATIONAL LAW SCHOOL OF INDIA UNIVERSITY: PROSPECTUS 2004-2005 at 38-39.

- Fifth Trimester: Jurisprudence I; Constitutional Law III; Criminal Law I; Family Law II
- Sixth Trimester: Criminal Law II; Administrative Law; Property Law; Political Science III
- Seventh Trimester: Criminal Law III (Cr. P.C.); Law of Evidence; Code of Civil Procedure I; Clinical Course I (ADR)
- Eighth Trimester: Code of Civil Procedure II; Corporate Law I; International Trade Law; Land Law
- Ninth Trimester: Drafting, Pleading, & Conveyancing; Corporate Law II; Human Rights Law; Law, Poverty, and Development
- Tenth Trimester: Taxation Law I; International Law I; Jurisprudence II (Interpretation of Statutes); Intellectual Property Law
- Eleventh Trimester: Clinical Course II (Litigation); Banking Law; International Law II; Labor Law
- Twelfth Trimester: Environmental Law; Trust & Equity; Labor Law II; Insurance Law
- Thirteenth Trimester: Conflict of Laws; Optional Seminar I; Optional Seminar II; Optional Seminar III
- Fourteenth Trimester: Taxation Law II; Optional Seminar IV; Optional Seminar V; Optional Seminar VI
- Fifteenth Trimester: Legal Practice (Professional Ethics); Optional Seminar VII; Optional Seminar VIII; Clinical Course III (Placement)
- “All courses carry a uniform course credit of 4 each.”³⁶⁸